

February 28, 2006



TRANSCRIPT
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MONTGOMERY COUNTY COUNCIL

PRESENT

George Leventhal, President	Marilyn J. Praisner, Vice President
Phil Andrews	Howard Denis
Nancy Floreen	Michael Knapp
Thomas Perez	Steven A. Silverman
	Michael Subin

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Council President Leventhal,
Okay, the County Council is now in session. Please be seated. Councilmembers,
please join us. Reverend Kelly, we're very glad to see you. We have an invocation.
Ladies and gentlemen, if we could quiet down. We have a moment of prayer. Our very
good friend Don Kelly, from the People's Community Baptist Church Reverend Kelly,
please proceed.

Reverend Donald Kelly,
Thank you, Councilman. Shall we pray? Lord, it's a frightening time to be alive and it's
also a wonderful time to be alive, because we the people of faith, oh God, are never in
despair. We're never discouraged because we know that whatever circumstance we're
in, that you're a part of. We come today, oh God, this morning to pray for the leaders of
this Council, pray that your sovereign hand will be upon them, that you will guide them,
that you will keep them. We pray, oh Lord, that they -- their mission field is the
communities in which they serve, the emerging communities in which -- are now coming
on. We pray, Father, that you would give them the light, that they will be the light in form
of equality and justice, that they will be called to reaffirm and confirm that which You
have given them in their mind to discern. Lord, send them into the world, this
community, this County, to call upon righteousness and justice. And Father, we thank
you for allowing each of us this day to participate with You in the things that You're
about to do today. Give them strength, give them guidance, let our ears be open to
attune to what You will say to us. We pray this from the eternal God. Amen.

Multiple Speakers,
Amen.

Council President Leventhal,
Thank you very much, Reverend Kelly. It was good to see you.

Reverend Donald Kelly,
Good to see you as well.

Council President Leventhal,
Okay, we have a proclamation by Councilmember Denis in recognition of the efforts of
the Potomac Area Newcomer's Club.

Councilmember Denis,
Thank you, President Leventhal, and I'd like to ask those who are here from the
Potomac Area Newcomer's Club -- that means -- the acronym is PANC. And we're so
glad that there's not an "I" between the "N" and the "C," 'cause then it would be
PANIC, right, and that's what we try to avoid. But why don't you all come up here and let
me indicate who's here. And Sue Bigler, Kit Sang Boos, Sandy Bresnahan, Phyllis
Hannan, Ann Melchior, Michele Snyder, and Arlene Swanzey. Let us -- go on either side
if you'd like or wherever you're comfortable. This is an outstanding organization; they've
been in business for roughly 40 years, which is the occasion of this proclamation. They

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1 had a wonderful dinner on Saturday night, attended by well over 80 people in the
2 Potomac area, and they do great things. They involve people in the community, they
3 reach out and help to make the Potomac area an even better place in which to live. I
4 have the flyer that they distribute around the community. I'd just like to share with you a
5 part of what it says; it's really very interesting, and you have to follow the bouncing ball
6 here very carefully. We lunch, we punch, we wave, we rave, we burn, we learn, we
7 weed, we read." Now, part of that may require bit of a translation. The "burn" part, I
8 gather, is calories. That's for the hikers and the dog walkers. And the "weeding" are the
9 green thumbs, the reading are the book groups, the learning, great decisions. The
10 "raving" are theater groups, the "punching" are defense courses, and the "lunching," I
11 guess, speaks for itself. I do have a proclamation that I'm going to read and then I'm
12 going to ask anyone in PANC who wants to say a few words to do so. The County
13 Council of Montgomery County, Maryland, proclamation. "WHEREAS, the 40-year-old
14 Potomac Area Newcomer's Club began in 1966 as the Welcome Wagon." And
15 "WHEREAS, PANC's membership reflects different ages, interests, experiences, talents
16 and cultures joining together for fun, fellowship, and friendship." And "WHEREAS, the
17 organization welcomes new residents within two years of relocation to Potomac, North
18 Potomac, Rockville, Bethesda, and Chevy Chase." And "WHEREAS, current members
19 have relocated to Montgomery County from other parts of our state and County, as well
20 as from Germany, France, Canada, India, Japan, Singapore, Italy, the United Kingdom,
21 and the Netherlands." And "WHEREAS, PANC provides support to Montgomery
22 County's Stepping Shelter with an ongoing collection of supplies and cash to assist
23 temporarily displaced families as well as helping to support other charities, such as the
24 Boys and Girls Club of Montgomery County, the Mercy Health Clinic of Gaithersburg,
25 the Child Assessment Center for the Primary Care Coalition of Montgomery County,
26 and the American Red Cross." And "WHEREAS, during 2004/2005, \$8,500 was
27 donated by PANC to these and other worthy charities. Now, therefore be it resolved that
28 the County Council proclaims the 40th anniversary of Potomac Area Newcomer's Club.
29 Presented on this 28th day of February in the year 2006." Signed by our President,
30 George Leventhal. I'm pleased to present it to Sue or whoever wants to -- okay, Arlene.
31 Come on, come on, Arlene.

32
33 [APPLAUSE]

34
35 Councilmember Denis,
36 Come in for a tight shot, we'll be able to immortalize you. Okay. Okay, I saw it flash,
37 thank you very much. Okay, Arlene, do you want to say a few words?

38
39 Arlene Swanzey,
40 Yes, I would like to. Thank you very much, Councilman Denis. Good morning honorable
41 Councilmembers and members of the Montgomery County community. It is indeed a
42 great honor and pleasure to have been invited here today to witness the reading of this
43 proclamation recognizing the 40th anniversary of the Potomac Area Newcomer's Club.
44 What more can I add? Only that our organization was a lifeline for me when we
45 relocated to the Washington area seven years ago and has been a source of comfort

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1 and welcome to hundreds of people over the last 40 years. If you are a newcomer to our
2 area or if you know someone who's new to the area -- and that includes Potomac,
3 Bethesda, Chevy Chase, parts of Rockville and North Potomac -- please consider
4 joining us or tell your friend about us. Our activities are as diverse as we are. They
5 include hiking and biking, museum trips, theater groups and movie buffs, gourmet
6 lunches and gourmet dinners for couples, discussion groups, book groups, bridge and
7 Mah Jongg groups, foreign language groups, a needlework circle -- well, the list just
8 goes on and on, and if we don't have it, we'll form it for you. We truly have something for
9 everyone and we welcome our new neighbors with open arms and an open heart.
10 Please visit our website at www.potomacnewcomers.com to learn more and to contact
11 us. We're waiting to meet you. Thank you very much.

12
13 Councilmember Denis,
14 Let's give it up for PANC.

15
16 [APPLAUSE]

17
18 Councilmember Denis,
19 Anyone else want to say anything? Okay. Okay. Thank you very much.

20
21 Council President Leventhal,
22 Okay. Thank you very much. We have another proclamation in recognition of the superb
23 high school students from our County who were semifinalists in the Intel Science Talent
24 Search by Councilmember Floreen.

25
26 Councilmember Floreen,
27 Thank you, Mr. President. If we could have our County's intellectual future join us up
28 here. We've got Minh-Phuong Huynh-Le, Yuan Zhang, Alexander Alm. I know there are
29 two of you who aren't here, I'm not sure which ones. Pria Anand, Kiran Bhat -- he's not
30 here? Clair Briggs, Lu Chen, Debbie Cheng, Shwetadwip Chowdhury -- if you'll bear
31 with me here -- Gregory Howard, Jun Hu, and Andy Jiang. The original -- and I just want
32 to say we have Dennis Heidler here from Blair. Oh, you're going to take pictures? We're
33 gonna want you up here, too. We'll help you with the pictures. The original Science
34 Talent Search for Intel started in 1942 to find and encourage high school seniors to
35 pursue careers in science, math, engineering, and medicine -- notably not politics.
36 These kids, or I should say, very talented students, have each submitted a research
37 report judged by more than 100 scientists based on research ability, originality, and
38 creative thinking. And just to give everybody an idea of what we're talking about here,
39 which is way above our pay grades, we have -- someone here to report on the "VPAR:
40 A Novel Tool For Visualization, Paint, Alignment, and Rotation in the Study of
41 Cerebellar Peduncle Degeneration and Its Relationship To Ataxia Severity." Raise our
42 hand -- who did that one? Okay. Everyone's gonna want a copy of that to study before
43 they go to sleep tonight. "A New Controller[ph] and Transisteration[ph] of Quantum
44 Harmonic Oscillators." Andy? Way to go, Andy. You guys are going to be inventing the
45 next Google, aren't you? "Oxidized LDL Metabolites Upregulate Expression of the --

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these are words? -- of the Adhesion Molecule CX3CL1 in Primary Coronary Artery Smooth Muscle Cells. Yuan? Brother. And it's just unbelievable. A dictionary isn't going to help any of us understand what you guys are up to. You're the people who are going to go on and get National Medals of Science, MacArthur Foundation Fellowships, and Nobel Prizes. We are so proud of you. We've got 12 semifinalists from Montgomery Blair High School, two of these, Yuan Zhang and Minh-Phuong Huynh-Le, are finalists, and there are only 40 across the country. That is really something else.

[APPLAUSE]

Councilmember Floreen,
And you all are going to find out what you win in two weeks, the 14th, right? The scholarship winners? We are blown away by your skills and talents. Let me read this proclamation we've put together for you. And come on down here, Brian[ph] -- Dennis, I mean you're the one I guess that we'll have to give this to. "WHEREAS, 12 Montgomery County public high school students were recently named semifinalists in the 65th Intel Science Talent Search, having submitted highly advanced projects for review in fields ranging from physics to computer science, medicine, earth science and beyond, and these outstanding achievers were chosen from over 1,500 applicants from 44 states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands and overseas schools." And "WHEREAS, each semifinalist will receive \$1,000 in recognition of his or her achievements, and Blair will receive \$1,000 per semifinalist for its science and math education programs." We're not going to hold it against you in the budget! "WHEREAS, these 12 semifinalists from Montgomery County all attend Montgomery Blair and two of you have been named finalists in the Talent Search, qualifying you to compete for scholarships and other prizes." And we hope full scholarships and big prizes. "Now there be it resolved that the Montgomery County Council recognizes and commends Minh-Phuong Huynh-le, Yuan Zhang, Alexander Alm, Pria Anand, Kiran Bhat, Clair Briggs, Lu Chen, Debbie Cheng, Shwetadwip Chowdhury, Gregory Howard, Jun Hu, and Andy Jiang of Montgomery Blair High School on your impressive achievement and extends its best wishes to each of you as you continue in your chosen fields." Congratulations, guys.

[APPLAUSE]

Councilmember Floreen,
And I have -- I have -- let's see here, I have some pins and little certificates for you all. Let's see here. Let me give you this to hold in a prominent position. Minh-Phuong? Congratulations. Here you go. Yuan Zhang? Ah, way down there! Congratulations. Now, these two are the ones who are in it for the big time in two weeks, right? Way to go, ladies -- women!

[APPLAUSE]

Councilmember Floreen,

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1 I like that, the women. This is great. Alexander Alm? Congratulations, Alexander. Here
2 you go. Pria Anand? Congratulations. Here you go. This is to remind you -- you're
3 supposed to wear these on your lapel pins when you receive Nobel Prizes
4 [INAUDIBLE]. Kiran Bhat? Congratulations. Clair Briggs? Not here. Lu Chen?
5 Congratulations. Debbie Cheng, congratulations. This is the hard one; Shwetadwip
6 Chowdhury? I didn't get it anywhere near right, did I? No!

7
8 [LAUGHTER]
9

10 Dennis Heidler,
11 Thank you.

12
13 Councilmember Floreen,
14 Gregory Howard. Congratulations. Jun Hu? Not here. Andy Jiang. Here you go. Thank
15 you so very much. Would anyone like to say anything about the program? Future for
16 everybody? Brian[ph]?
17

18 Dennis Heidler,
19 Thank you very much, Councilwoman. We are very proud of the achievements of our
20 students. These are -- this is just one of the many accolades that our students receive.
21 We know that they're going to go on to outstanding careers and hopefully come back to
22 us in the areas of science, math, and technology. So we appreciate your continued
23 support.
24

25 Councilmember Floreen,
26 And hopefully some of -- a couple of you will come back and teach at Blair and bring
27 more kids along. Anybody else like to say anything for the cameras? Mom and dad?
28 Okay, let's have a group photo. We have to all squash in together here.
29

30 Multiple Speakers,
31 [INAUDIBLE]
32

33 Councilmember Floreen,
34 Yes. We got everybody here? Okay. Got it?
35

36 Photographer,
37 Let's get one more. There we got it.
38

39 Councilmember Floreen,
40 Thank you very much. Congratulations. Go on and do wonderful things.
41

42 Council President Leventhal,
43 All right. Let's hear it for our outstanding young people.
44

45 [APPLAUSE]

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1
2 Council President Leventhal,
3 Congratulations to all of the young scientists. We appreciate your good work and look
4 forward to great things in the future. Agenda and Calendar changes, Ms. Lauer.

5
6 Unidentified Speaker,
7 Calendar changes.

8
9 Linda Lauer,

10 On the Consent Calendar this morning we're adding G: Introduction of a Resolution To
11 Establish Policy On Parking At County Libraries, and that will go to HHS Committee on
12 Thursday, March 2nd. This afternoon there's an additional closed session at 2:45 to
13 consult with staff consultants about pending or potential litigation and the topic is
14 American Financial Services Associations, et al, versus Montgomery County. Also, just
15 to note Public Safety on Monday, March 6th, has been canceled and the PHED
16 Committee meeting scheduled for this afternoon will begin at the conclusion of the two
17 public hearings. There are several petitions received in the Council office this week.
18 There were a number of them supporting full funding of the school budget. Another one
19 supporting modernization of Walter Johnson High School, supporting full funding of
20 schools and an addition for Pyle Middle School. an addition for Luxmanor Elementary
21 School and funding for all Walter Johnson scheduled capital projects. Another one
22 supporting addition at Luxmanor Elementary School. We have one supporting the
23 Wheaton tennis -- indoor tennis facility and the resurfacing of six outdoor courts at
24 Wheaton Regional Park. Another one supporting renovation of Gaithersburg Library,
25 another one full funding of the schools and modernization of Bells Mill Elementary
26 School. And then the final one supporting modernization of Walter Johnson High
27 School. That's it.

28
29 Council President Leventhal,
30 Thank you. Any minutes for approval?

31
32 Council Clerk,
33 We have the minutes of February 7th for approval.

34
35 Councilmember Knapp,
36 Move approval.

37
38 Councilmember Praisner,
39 Second.

40
41 Council President Leventhal,
42 Mr. Knapp has moved and Ms. Praisner has seconded approval of the minutes of
43 February 7th. Those in favor of approving the minutes will signify by raising their hands.
44 It is unanimous. Thank you very much. We have the Consent Calendar before us. Mr.

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1 Knapp has moved and Mr. Perez -- Ms. Floreen has seconded the approval of the
2 Consent Calendar. Mr. Andrews has comments.

3
4 Councilmember Andrews,

5 Thank you, Mr. President. I want to speak for a few minutes on Item "G," which is the
6 resolution to establish a policy of parking at County libraries. And I appreciate all the
7 support from my colleagues on this. On February 9th Councilmember Anne Robbins
8 and Rockville activists and general library activist Irwin Charles Cohen, who is with us
9 today in the audience, and Lora Meisner and I held a news conference, the catalyst of
10 which was looming plan for charged parking at the new Rockville Regional Library when
11 it opens later this year. The County currently, as I think are most are aware, has free
12 parking at County libraries with the exception of Bethesda Regional Libraries on
13 weekdays until 2 p.m. I know that everyone here wants to encourage library use. This is
14 a County library card. This is my County library card. There are 525,000 of these cards
15 in circulation at this point. Libraries are loved by Montgomery County residents, they're
16 loved by everyone up here on the County Council. And the County Council has a long
17 tradition of working very hard to support our library system, which is one of the nation's
18 best. My concern is that if we move to a system of charged parking at some of our
19 libraries, which is the plan for Rockville and for Silver Spring, when it's rebuilt in
20 downtown Silver Spring, and this is currently the case at Bethesda in the mornings until
21 2:00, that that presents a possible obstacle for use. It certainly doesn't encourage use
22 and we should make sure our County policies encourage library use. And so this
23 resolution, which is being introduced this morning, and it is co-sponsored by
24 Councilmembers Denis, Perez, Floreen, Silverman, and Subin, would establish a policy
25 -- is that County residents will not be charged for parking while using any County
26 libraries. I think it is necessary to rest this issue now because of the looming issue
27 before with us the Rockville Library and the plans for the Silver Spring Library and the
28 current policy at Bethesda until 2:00. And so this resolution would establish what the
29 County policy is on parking at libraries so we don't slide away -- unintentionally, I think,
30 or without formally addressing the issue -- from the current practice. Montgomery
31 County residents have supported libraries so strongly and I don't think there's a better
32 measure of a County's health than its library use. And I think we need to make sure we
33 do everything possible to continue, that there are no barriers to our libraries and let's --
34 just one other point -- and that is our County libraries are used by people from around
35 the County, the new Rockville Regional Library will house collections for special needs
36 users who will come from around the County to use it. It houses the Government
37 Collection, the Business Collection, and the Children Resources Center. Other libraries
38 also have special collections that draw users from across the country. So, it truly is a
39 system that needs to be looked at that way. And so this would establish a County policy.
40 It's bigger than any one library. I think it's important to do now. I thank my colleagues for
41 their support and look forward to participating in the Health and Human Services
42 Committee discussion this on Thursday. Thank you, Mr. President.

43
44 Council President Leventhal,
45 Mr. Perez.

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Councilmember Perez,

Thank you. I wanted to thank a number of long-time and some recent activists from Silver Spring for serving on the Silver Spring Citizens' Advisory Board. Met with a number of them last week and were very excited for the service. And, secondly, I wanted to thank Mr. Andrews for his leadership on this library issue. It's obviously going to be front and center in Silver Spring as we build a facility that will be part of a wonderful renovation near Fenton Street. Most people will be using the Wayne Avenue garage for service at the Silver Spring Library. So this is obviously an issue that's front and center there. There are some implementation challenges, but I'm confident that we can resolve all of those challenges and fashion -- implement a policy that makes sense, and as Mr. Andrews correctly points out, encourages library use. Thank you.

Council President Leventhal,
Ms. Praisner.

Councilmember Praisner,

Yes, Mr. President. Item "B" is the special appropriation being introduced for accessibility improvements at Rollingwood Center and I just wanted to report to my colleagues that the management and Fiscal Policy Committee has already had two conversations about this issue, although the supplemental will go to the Education Committee because it is an improvement to a Rollingwood elementary school, which is a closed school being used by a private provider who pays rent to the school system for the use of that building. We've asked for and received a preliminary list of all polling places where there may be an issue of accessibility. And in the case of Rollingwood, what we had been told is that it already needs ADA accessibility issues, but there is a significant challenge associated with where the parking is and where the entrance is for polling. So although one might say it is accessible, it really isn't in the actual implementation sense. We did receive a list of quite a few polling places where there is an issue or could be an issue of accessibility. The Board of Elections has hired someone to do a comprehensive review of all polling places. Unfortunately, we were told that work won't be done until June. It is my desire and the MFP Committee's desire that we get a report of a preliminary information on those polling places. I think we're due to meet with the Board of Elections again in about three weeks. And we'll have an understanding at that point of the magnitude of the issues. In some cases it's just a door that needs the capacity to be activated when someone pushes the button for opening and someone may have shut it off. In some cases it might be a slight modification. And so we've been assured by the Board of Elections in their preliminary assessment that in most cases that the dollar amounts will not come anywhere near the \$75,000 that we're talking about for Rollingwood. However, in the interests of equity and uniformity of access I think it's important, and I think the Committee agrees, it's important that we look at all precincts in this time period not just Rollingwood. Having spent money on Rollingwood. I think the question would be, from a legal perspective, why haven't we looked at the other precincts from a legal challenge perspective. So, as we're dealing with the \$75,000 which is obviously a funding to the school system, we want to be alert

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1 that we have modified that and multiply the recipients in order to accommodate that
2 number and that would come from the MFP Committee's discussion, not the Education
3 Committee's discussion on Rollingwood. The second point I would make is some these
4 buildings are not government buildings, they're private buildings. And so that may have
5 other issues associated with it which we will review. Finally, I would note for the
6 Education Committee's discussion that we would ask that you look at the issue of the
7 rental money which the school system gets from the use of that building and the
8 occupants -- ongoing occupants' benefit associated with making these improvements for
9 someone who might visit that school on a regular basis, such that there might be some
10 issue with the lease amounts or the rent that's collected to look at the improvements on
11 that school and perhaps the source of funding. Although the \$75,000 is really not a
12 major number, but it is an issue that needs to be looked at as well. So those are my
13 comments on Item...

14
15 Council President Leventhal,
16 Thank you, Ms. Praisner. And, of course, there will be opportunity when we actually
17 take up the amendment regarding the special appropriation regarding Rollingwood to
18 debate that or not, as Councilmembers choose. Mr. Silverman.

19
20 Councilmember Silverman,

21
22
23 Thank you, Mr. President. I appreciate Ms. Praisner's comments. And I think the
24 Committee will find that there are a whole host of other facilities that are polling places
25 that have issues -- accessibility issues. The reason why I suggested and asked that this
26 be introduced is because, according to the Board of Elections, this is the only polling
27 place in Montgomery County which is not accessible which would require the Board of
28 Elections to pick a polling place outside the precinct. I mean it is a very unique situation.
29 It is not an ADA accessibility issue because you can get to the polling place. It is an
30 issue of -- for anybody who's been out there -- of how, if you're wheelchair bound or on
31 a walker, you can navigate what amounts to 400 feet uphill in order to get to a polling
32 place. And that's why I suggested that we move expeditiously on this, not to the
33 exclusion of anything else. The other piece of it is in the conversations that I had with
34 our good friends in the school system, they are absolutely committed to getting this
35 thing done in time for the polling place to be opened, if the resources are available to
36 them. There is no obligation from an ADA standpoint for MCPS to do this. It's a leased
37 school to the French[ph] School. They have no obligation either, which is why this is a
38 little bit tortured to be done through a proposed amendment to the Schools' capital
39 budget, but they're the ones that would actually do the work. The bottom line is I would
40 ask the Education Committee to take this up in an expeditious manner so that if the
41 Council -- if the Committee and Council are willing to do so, we can get them the
42 resources, they can get out there and take this corrective action in time for September.
43 And if there are others that can get down that are of a much more minor nature that
44 don't require six months lead time, then I look to the Committee to take that up. Thank
45 you.

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1
2 Council President Leventhal,
3 Mr. Subin.

4
5 Councilmember Subin,
6 Where are the funds supposed to come from?

7
8 Multiple Speakers,
9 G.O. Bonds.

10
11 Councilmember Subin,
12 Charged against who?

13
14 Councilmember Praisner,
15 No one.

16
17 Councilmember Silverman,
18 Just County G.O. bonds.

19
20 Councilmember Praisner,
21 County funds.

22
23 Councilmember Subin,
24 Why can't the County do the work.

25
26 Councilmember Praisner,
27 Because it's a school... Because it's a school building and it has to be given to the
28 schools.

29
30 Councilmember Subin,
31 I understand that, but...

32
33 Councilmember Silverman,
34 It's County bond money but the only people who are officially able to do the work would
35 be the school system and Mr. Hawes had indicated he's ready, willing, and able to do
36 this if the resources are there.

37
38 Councilmember Subin,
39 I'll be happy to hear it. I can't see anybody objecting to it. I don't know why, outside of
40 the fact that it's a leased school building -- that -- I mean, I'm having a hard time seeing
41 justification if we put it under there. But as long as the school system's not being
42 charged the money.

43
44 Multiple Speakers,
45 No. Not at all.

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1
2 Councilmember Silverman,
3 Doesn't count against the school system's capital budget.

4
5 Councilmember Subin,
6 We'll be happy to handle it. Put it out in year eight when they're going to have an
7 incredible budget.

8
9 Council President Leventhal,

10 Okay, those in favor of the Consent Calendar will signify by raising their hands. It is
11 unanimous. We are now moving to District Council Session. We have the introduction of
12 a Zoning Text Amendment by Mr. Knapp, 06-07, regarding farm building supplies and
13 construction in the C-1 zone. We need a motion to approve the resolution to establish a
14 public hearing. Mr. Knapp has moved and Mr. Perez has seconded the resolution to
15 establish a public hearing for -- January, February, March -- April 4th on ZTA 06-07.
16 Those in favor will signify by raising their hands. It is unanimous. We now move to the
17 Zoning Text Amendments that have been reported by the PHED Committee. Last
18 summer the Montgomery County Council agreed to an action plan for dealing with the
19 process of restoring the credibility of and confidence in our County government's
20 processes for regulating development. We said there are significant problems in
21 Clarksburg and we must find out what went wrong and why and come up with
22 comprehensive solutions to the problems. Between then and now we have expended
23 countless hours towards that end in a multiphase effort. We assigned to our
24 independent Office of Legislative Oversight the formidable task of examining what went
25 wrong and why in the Clarksburg situation. OLO came through for us with an exhaustive
26 report that identified weaknesses and lack of coordination in the processes of the
27 Planning Board, Department of Permitting Services, and in the oversight by this Council.
28 They identified the role of the private sector and OLO provided us with a road map to
29 restore credibility to regulation of growth by County government. As we consider today
30 how the Planning Board can approve and amend site plans in the County, a critical
31 piece of the puzzle, I wish I could tell you we are finished with our task, but we're not.
32 Much remains to be done. The mediation between the developers and builders and the
33 community in Clarksburg is ongoing and was recently extended to April 6th. We still
34 have to finalize where the responsibility for enforcing site plans lies. A permanent
35 Planning Director has yet to be chosen. The Council will decide this summer who will
36 Chair the Planning Board for the next four years. Funding for increased staffing and
37 technology needed to implement improvements remains to be approved. The inspector
38 general continues his look at the situation. As Winston Churchill said after the Battle of
39 Britain, "It's not the end, it's not even the beginning of the end...but it is perhaps the end
40 of the beginning." We all agreed last summer that a critical step in restoring public
41 confidence in the planning process was to ensure that we take aggressive, appropriate
42 measures in the short term, that are useful and responsive to the problems. We also
43 took care that the short-term measures were proportionate and not an overreaction to
44 the problem. And we worked hard to minimize collateral damage to innocent third
45 parties. What did we do? And I mean "we" in the collective sense. We instituted a

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1 Countywide freeze of building permits and site plan amendments until we could verify
2 height limits and setback requirements. We worked to identify the necessary provisions
3 of the Clarksburg Town Center site plans pertaining to road and public safety
4 infrastructure, including recommendations for guaranteeing that the necessary
5 infrastructure is in place in a timely fashion. We reviewed site plans approved
6 throughout Montgomery County after January 1st, 2003, to make sure that work was
7 being done in accordance with the specifications of the approved plans and suspended
8 development in any site plan where violations were uncovered. We brought on
9 additional expert help in the persons of Royce Hanson and Bob Kendall to assist
10 respectively the Council and the Planning Board in pushing forward reforms. We asked
11 for and received a comprehensive management improvement plan from the Planning
12 Board. We worked to ensure that midlevel planning personnel could no longer approve
13 so-called "minor" amendments to site plans. We required a staffing plan from the
14 Department of Permitting Services and the Planning Board to increase the number of
15 personnel dedicated to site plan and other enforcement duties. We have sought to
16 strengthen citizen participation and involvement in the development approval process at
17 every turn. No citizens' group should ever again have to go through all that the
18 Clarksburg Town Center Advisory Committee had to in order to get a fair shake for its
19 community. We have come a long way since last summer. We have done all this and
20 more. Not to put all this behind us, but rather because it is our responsibility to find out
21 what went wrong, wrestle it to the ground, and make sure it doesn't happen again. It's
22 not the blame game, it's the responsibility game. Chairman Silverman.

23
24 Councilmember Silverman,

25 Thank you, Mr. President. I have a few comments as well before we get into the
26 legislation. I wasn't going to quote Churchill, I'll just quote Yogi Berra. "If you want to get
27 somewhere, you have to first know where you're going."

28
29 Councilmember Praisner,

30 If you come to a fork in the road...

31
32 Councilmember Silverman,

33 Well, I could have used that one, too. We're gonna take a fork today. I appreciate the
34 comments of the Council President. This issue of Clarksburg has been with us for
35 almost nine months now in terms of the challenges for our agencies and the credibility
36 of our planning process in Montgomery County. We have, I think, three basic goals:
37 greater transparency to the public; greater efficiency; and greater accountability and
38 oversight. And the legislation that I hope we will pass today will set about to make
39 corrections and improvements in all of these areas. Let me just highlight as a quick
40 overview the Zoning Text Amendments in front of us and also a couple of other pieces
41 that we've already handled through the appropriations process. What we found as a
42 result of Clarksburg were that there were deficiencies in how complaints from citizens
43 were handled, that midlevel staff approved changes to plans without clear guidelines as
44 to what changes were appropriate to be done at the staff level, and more importantly,
45 which changes needed to be approved by the Planning Board versus those items that

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1 the staff felt they could go ahead and make without any notice to the public. There were
2 management deficiencies with a lack of clarity and poor record keeping and important
3 regulatory decisions by the Planning Board. There were ambiguous laws and gaps in
4 necessary coordination among the different government agencies. Today we're about to
5 embark on making substantial legislative changes which I think will move in the direction
6 of the goals that I referred to. What are we gonna do? First of all we're gonna give the
7 public greater access at the beginning of the development approval process for a
8 project. We will require developers to hold meetings with community leaders to a project
9 before they formally submit a plan to the Planning Board. We have directed the
10 Planning Board to develop regulations clearly outlining which changes to an approved
11 plan can be made by staff and which must go back to the Planning Board for approval.
12 Authority to make minor changes to approved plans which was at the heart of the
13 Clarksburg matter will now be limited to the staff director at the Planning Department,
14 not midlevel planners, and there will be public notice of these changes and an
15 opportunity to request a hearing before the Board. There will be more inspections during
16 construction. They will be done by the Department of Permitting Services, but ultimate
17 enforcement of site plans will remain with Park and Planning. We have required DPS
18 and Park and Planning to develop a memorandum of understanding, a preliminary draft
19 of which was reviewed by the PHED Committee yesterday, which will specifically outline
20 how the inspection and enforcement process will work and, more importantly, how
21 citizen complaints will be handled and by whom. The Planning Board will have the
22 authority to assign violation hearings to a Hearing Examiner who has subpoena power
23 which will address another issue that was raised during the Clarksburg enforcement
24 process. There have been a series of management changes already made in Park and
25 Planning. They have developed an extensive management improvement plan, existing
26 staff have been redeployed, and new staff will be hired to review and enforce approved
27 plans. The Council, as you know, just approved a special appropriation of almost \$1
28 million with almost all the expenditures paid through fees on development. In addition,
29 last December, we passed a special appropriation providing about a half a million
30 dollars, less than half a million dollars, to the Department of Permitting Services for
31 them to bring on Board inspectors to be out in the field as the eyes and ears of our
32 inspection process. I think our goal has been very simple, which is to identify the
33 systemic problems and fix them. To restore confidence in our land use planning,
34 inspection and enforcement process, we have to make sure there are no more
35 Clarksburgs. So with that, unless there are other questions or comments at the
36 beginning I'll be happy to get into the specifics of the legislation.

37
38 Council President Leventhal,

39 We do have some comments, I think, in terms of an overview. Vice President Praisner.

40
41 Councilmember Praisner,

42 Thank you. I had intended to make a couple of comments and so I appreciate it. I don't
43 have anything written down. I love the references to both Winston Churchill and Yogi
44 Berra, two of my favorite individuals. Unfortunately, I never had the opportunity to meet
45 Winston Churchill, but I can tell you Yogi is as delightful in person as he is in his

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1 quotations. I think we do have be very careful when we come to a fork in the road, we
2 don't just take it. And also, to quote Lewis Carroll, who is also one of my favorites as
3 well, the Cheshire Cat's suggestion that "Any road will do if you don't know where you're
4 going" is also something that I think we should avoid. And I think the counsel from
5 Royce Hanson has been very helpful for us in this process that we not overreact, but
6 also that we focus not just on the procedures and the process, which I know I have a
7 reputation for focusing on, but also on the outcomes as well. And the proof in the
8 pudding for all of us will not be the procedures that we put in place, but the construction
9 that is developed after that process. And the confidence which, hopefully, the
10 community that resides where a development is planned -- plus those who occupy the
11 new development -- the confidence that both those groups have in the outcome that we
12 achieve. So we won't know for some time -- maybe faster than later -- given the rapid
13 desire to develop in this County. But we will have to see the results and hopefully have
14 the kind of outcome that we all want. The one piece that has been most important to me
15 has been community access and community involvement. And some confidence that
16 the answers given are the same or are consistent no matter where you live in the
17 County and no matter what project you're dealing with. And that, again, too, the proof
18 will be in the reality of what we see when we deal with each of the developments that
19 may occur. I still think we have a lot of work to do. We have a lot of work to do both at
20 Park and Planning and a lot of work to do in the Executive departments to make sure
21 that procedures and standards and measurements are consistent. And that to the extent
22 our zoning ordinance is the problem, that we respond and look at the zoning ordinance
23 as well. So we're talking about administrative regulations where they don't exist as yet,
24 administrative procedures that are clear transparent and available to the general public,
25 memorandums of understanding, that are both clear in their definitions and
26 responsibility and also transparent for folks, that are reviewed by the Council as well as
27 by the department heads and agencies heads that are crafting them or approving them.
28 And a broader interaction and dialogue. So, several years ago we had periodic
29 conversations at the Council level, probably Council and PHED Committee, but Council
30 as a whole to discuss the development review process. As we've been told by folks the
31 issue of lead agency on things that have evolved since then are things that we need to
32 look at. I hope they will be put on the table soon. As I indicated yesterday in the PHED
33 Committee discussion a packet of materials from Mr. Hubbard about internal
34 procedures in DPS has generated for me a whole host of new questions, or ongoing
35 questions that still remain that we have to work on, in my view. And I think a desire to
36 have the administrative regulations and procedures very clearly articulated for both Park
37 and Planning and for these other agencies -- other departments, such that they are not
38 informal documents but they are public documents that both the developer who is trying
39 to build under those and a community member, as I said, who lives in or near those
40 communities can understand clearly in plain English what we're doing. And finally, I
41 think there is still an issue associated with the new zones that are being brought to us
42 by the Park and Planning Commission and staff. Whether they be with master plans or
43 separate about the complexities of those zones and any of the discussion about
44 boulevards and commercial centers is going to generate even more discussion about
45 the inadequacy of, perhaps, those zones for the kind of review and standards being

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1 associated with them so we fully understand what it is we're suggesting and how we'll
2 know -- how we'll know it when we see it. So, I think this is just a point on the continuum
3 of the work that needs to be done. Yes, I think we've done a lot of good work, but there
4 is still more to be done.

5
6 Council President Leventhal,
7 Ms. Floreen.

8
9 Councilmember Floreen,

10 Thank you. I think that the key terms, at least for me in guiding my views in all of this
11 has been objectives of clarity, predictability, and accountability. And I think those are --
12 should describe what we're proposing in this legislative package. It should be -- there
13 should be standards that we, as a Council, try to adhere to when we adopt Zoning Text
14 Amendments and do master plan work. I'm hopeful that we're moving towards that
15 direction so that the community and the building world as well as the decision-makers
16 will start being more on the same page as to what the rules are and how we're going to
17 move forward. I wanted to express my appreciation to the civic federation, to the
18 building industry association, and really to the countless Committee members who have
19 commented, provided us with observations, concerns, complaints through this process
20 because I think that has been tremendously helpful in informing, certainly Council staff,
21 and the Committee recommendations in how to proceed with respect to notice,
22 engagement and clarity. I'm sure that there will be bumps in the road, but I think this --
23 the engagement that everyone has evidenced has really made it possible to have, I
24 think, a pretty good dialogue about what the issues were and what were genuine ways
25 of addressing them. I would especially like to thank the Planning Board and its staff. It's
26 had a heck of a time over the past -- since July, since last year -- in terms of turnover, in
27 terms of challenges of increasing demands, and certainly the need to be responsive to
28 the Committee as well as to the public and the engaged community members. And we
29 know that they have been forced to really reallocate a significant amount of staff time to
30 dealing with these issues. I'm hopeful that it will have paid off. In the meantime a new
31 acting director has been put on, Ferroll Hamer standing in the back very quietly, who in
32 six weeks became the lead advocate on these issues. That's not easy and she's
33 handled it tremendously well. We are very grateful to her. I think one of the challenges
34 of this, of course, is, as the doctors would say, "First, do no harm." I hope that what
35 we're proposing will not harm the need for creativity in the development process while at
36 the same time adding clarity, predictability, and accountability. We still want what goes
37 through the review process to achieve the best, to solve real needs, and to evidence
38 creativity and forward-thinking in about how your communes will grow and look. And I
39 am very hopeful that what we're proposing today will not impede that objective. Equally
40 important I think is the challenge and the work that we've been doing to respect the
41 independence of the Planning Board, which I think is very important, while at the same
42 time acknowledging the Council's need for oversight. This has been a balancing act,
43 we're trying to find the right way to move forward. I know the Planning Board has some
44 concerns about the Council's engagement and regulations. But I think at the end of the
45 day, we ought to get a product that adds clarity, adds predictability, and keeps the

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1 accountability up here, ultimately, where it should reside. As I said, I thank everybody, I
2 think that we have a good proposal to work on, it's surely not the end of the
3 conversations we'll be having on these issues. But with the new staffing that's proposed,
4 the continued engagement of DPS. We will be turning attention to how they address the
5 investigative effort we're asking them to take on. We will be watching how that work is
6 performed and its responsiveness to stakeholder needs. And I think that when all is said
7 and done, we will come up with a much better process than we started with. Thanks.

8
9 Council President Leventhal,
10 Mr. Knapp.

11
12 Councilmember Knapp,
13 Thank you, Mr. President. I appreciate the comments of my colleagues, and I
14 particularly appreciate yours, Mr. President, as it relates to the end of the beginning. It's
15 been nine months that the Council has been dealing with this. It's been longer that
16 others of us have been dealing with some of these issues in Clarksburg. It's been a long
17 process. Not the least of which has been the impact on the community. I appreciate the
18 comments that my colleagues were making. I would -- there's still, I hear, an air of
19 finality to some extent, we're saying we've done a lot, thereby implying that we've made
20 -- this is a milestone. I think it is a milestone in that we are finally taking some legislative
21 action, but I want us to be careful not to do action for the sake of action, be able to point
22 of that and say, "See, now we can move on." in a legislative body, we have a tendency
23 to pass something and say, "See, we did it." I think reality is that we are just beginning
24 the process of how do you do these things? This is a little unusual for us because we're
25 generally not the Executive or the leadership organization, but in this instance, we do.
26 We own the planning process and the land use process. So I think it's different than
27 looking at Executive agencies. And I was struck by -- and Mr. Hanson's memo last
28 night. Where I think this is very poignant on page 4. He says, "Ultimately Council
29 oversight performance will be more important than oversight of procedure." I think it's
30 important for us to keep track of that. And that the most important outcome should be
31 better development projects. Those are the types of things I think really point to us
32 continuing to stay engaged, not just in the legislative capacity, but really in an oversight
33 and awareness capacity. And as Ms. Floreen rightly points out, not to micromanage, not
34 to do the job of the Planning Board, but to engage in oversight. Make sure that, when
35 we get an MOU outline, from my perspective, that we actually get the full MOU. That we
36 understand the details clearly. That we understand the elements of the Management
37 Improvement Plan are really being implemented. What's the timing? What are the
38 performance measures? How's that being done? Who makes decisions when it gets
39 through points of conflict between agency and departments? To make sure we address
40 those elements as well. Those are things, those are questions I think we can ask. Not
41 that we do, but are things we need to continue to do going forward. That's going to be
42 very important for us to recognize that this is truly the end of the beginning. But that the
43 next stages require a lot more vigilance, lot more oversight, not just the passage of
44 legislation an saying, "Great, we're done, now we can move on to other things this
45 year." Because I think it's going to require us coming back fairly regularly over the short-

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1 term or short- to mid-term an continue to focus and address these issues, because I
2 think as we implement the Management Improvement Plan, the administrative actions
3 that I know Park and Planning is undertaking, look at this legislation. There are a lot of
4 pieces that we're going to have to refine further and continue to dovetail. There are a lot
5 of questions even with what we're addressing today that are going to need -- probably
6 won't be able to refine today. We're going to continue to come back and address that. I
7 just want to make sure that we have the note of caution that says, "Yes, this is a step,
8 it's a good step, but it's not "the" step." There's a lot more work to be done here.

9
10 Councilmember Praisner,
11 Okay. Well, Mr. Silverman, it's your start to begin. Let's begin and go through it. Mr.
12 Perez, you wanted to comment?

13
14 Councilmember Perez,
15 No, no...

16
17 Councilmember Praisner,
18 I'm sorry.

19
20 Councilmember Perez,
21 I think enough was been said.

22
23 Councilmember Silverman,
24 We could actually wait until we get to vote before giving...

25
26 Councilmember Praisner,
27 Okay, go ahead. I'm sorry, Tom. I didn't realize that. Go ahead.

28
29 Councilmember Silverman,
30 Okay. What we'll do is sort of go through this, see what kind of questions or comments
31 people have. And Mr. Faden, you've given us a supplementary packet so why don't we
32 get to that at the end. I would actually ask Chairman Berlage and the Planning Director
33 Ferroll Hamer to join us at the table. In the event there are questions or comments
34 people have.

35
36 Derick Berlage,
37 Good afternoon.

38
39 Councilmember Silverman,
40 Welcome.

41
42 Councilmember Praisner,
43 Morning, morning still, Derick.

44
45 Derick Berlage,

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1 I've been up a long time.

3 Councilmember Silverman,

4 Okay, it's pretty self-explanatory. Let's go right -- I mean in terms of the overview -- let's
5 go right to the Amendment Committee recommendations, which are on page 2 of the
6 packet. First is preplanned participation. The issue was outlined, is pretty clearly
7 outlined here, which is how do we get citizen participation in the site plan review
8 process earlier, because there is no provision at this point? The Committee
9 recommendation is to insert a requirement that each applicant for a site plan show that
10 it is -- that it posted notice on the property, it has directly notified affected parties and
11 held a pre-submittal meeting with the public before filing its application with the Planning
12 Board. There will be regulations that the Planning Board will produce that will be subject
13 to -- I think this is Council review and comment now, I think we are not disapproving.

15 Councilmember Praisner,

16 Well, before we get to that, why don't you just say what it is that's in the packet...

18 Councilmember Silverman,

19 I know, I'm trying...

21 Councilmember Praisner,

22 ...that is an issue that I think we'll have a question about.

24 Councilmember Silverman,

25 I know, but I thought that...

27 Councilmember Praisner,

28 And Mr. Perez also has his light on.

30 Councilmember Silverman,

31 I thought the Committee recommendation yesterday was that it was not gonna be
32 review and disapproval or are we just talking about the MOU yesterday?

34 Councilmember Praisner,

35 No, that was the MOU yesterday.

37 Councilmember Silverman,

38 Just the MOU? Okay. All right. Fine. Okay, they'd be subject to Council review and
39 disapproval and would specify how and to whom notice would be sent and other details
40 of the process. So now let's...

42 Councilmember Praisner,

43 Tom.

45 Councilmember Perez,

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1 You may have just answered my question, Mr. Chairman. I'm trying to think at this point
2 through the Doctrine of Unintended Consequences and all the details that, upon
3 implementation, often cause challenges. Let's assume for the moment that an applicant
4 holds a meeting, has a vision, gets feedback and as a result tweaks the site plan prior to
5 its submittal. So it's different than what was discussed at the meeting. Does a resident
6 who doesn't -- who has issues have some sort of a procedural claim under that set of
7 circumstances?

8
9 Councilmember Silverman,
10 No, in fact...

11
12 Councilmember Perez,
13 Is that clear?

14
15 Councilmember Silverman,
16 We try to -- I'll just finish and then let the Chairman speak. We had an extensive
17 discussion about that. We decided to get away from and leave it to the potential
18 regulations that might be drafted as to what level of information would even have to be
19 provided at the meeting. Because one applicant may walk in with a full-blown, you
20 know, drawings and plans, another one may walk in with sort of a concept and say "I'm
21 really here to get a lot more feedback." But we were going to leave it to the Planning
22 Board to try to spell out through regulations what the content of the meeting might be.
23 But under no circumstances was the intent to -- for there to be a requirement for another
24 meeting, even if there are changes. It was to try to at least ensure that there's one
25 discussion between the community and the applicant.

26
27 Derick Berlage,
28 I can probably shed a good deal of light on this provision because this is one provision
29 in the legislation that actually originated with the Planning Board, and originated most
30 specifically with the public hearing we had as part of our reform effort to get public
31 comment on how we could enhance public access to the development review process.
32 And the comment that we heard consistently was that members of the community are
33 concerned that by the time an application is close to the point where it's going to come
34 before the Planning Board for a decision, so many decisions have already been made
35 by the developer with involvement by the staff, that the citizens feel they are addressing
36 the application that to some extent is already...

37
38 Councilmember Perez,
39 That the train is too far down.

40
41 Derick Berlage,
42 ...the train is too far down the track. And so we decided that -- to ask you for a very, very
43 early and very prominent action that would ensure that, in effect, the community knows
44 right from the beginning that an application is leaving the station and that it's time to
45 start to exert your influence. And that our recommendation, which is in the legislation, is

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1 to have a meeting with the community before the application's even filed at Park and
2 Planning, in other words, before it starts down the track, and in addition to have posting
3 in the community. This will not mean that the community is going to get everything it
4 wants or that a developer is required to listen to a particular proposal at a preapplication
5 meeting. Although we hope that that's what will happen. What it does accomplish is that
6 affected members of the community will know, before anything happens in the
7 regulatory process, that something is under consideration and they'll have time to get
8 ready for the entire process and participate fully in it.

9
10 Councilmember Perez,
11 I have a question, is "affected member" a term of art?

12
13 Derick Berlage,
14 We would be issuing rules of procedure which would require notice to individuals in the
15 immediately adjoining area, to civic associations. We maintain a very comprehensive list
16 of civic associations and homeowner associations that we use for our other regulatory
17 purposes. And so we would be sending out notices as broadly as possible or, frankly,
18 asking the developer to send it out as broadly as possible. It's not a legal term or art at
19 that point.

20
21 Councilmember Perez,
22 I'm having a...again, I strongly support the concept, as I think we all do, but I can easily
23 foresee sets of circumstances where in the implementation of this concept that we all
24 support, if not done prudently or sufficiently thoughtfully, can actually cause as much
25 harm as it was attempting to prevent. So I look forward to those regulations, because I
26 think those regulations are critically important in achieving the spirit of the enterprise.

27
28 Derick Berlage,
29 We agree.

30
31 Council President Leventhal,
32 I have a question on that point as well. Okay. Here's a hypothetical. There's a vacant
33 piece of property. The neighbors don't ever want to see anything built on it, they like it
34 vacant. So they decide that they'll never meet, they're never available; they won't meet.
35 But the law requires that before site plan is amended -- is submitted you have to have a
36 meeting, but the neighbors refuse to meet. Okay, what happens then.

37
38 Ferroll Hamer,
39 Well, I think the -- that's a -- the regulations would clarify that the developer has an
40 obligation to make a certain number of attempts to meet. Then the project can move on
41 if none of those -- I mean there is -- there needs to be some boundaries set about -- to
42 work with exactly that kind of situation so the project can move forward and it can't be
43 stymied before the applicant even has a chance to submit the application.

44
45 Council President Leventhal,

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1 Okay. Mike Faden, follow along with my hypothetical. Does this language in line 108, as
2 required by Planning Board regulations, provide for a way out of the meeting
3 requirement if a valid effort has been made to have a meeting?
4

5 Michael Faden,
6 I think it does, along with the legislative history that Ms. Hamer just put on the record. I
7 think that is consistent with the Committee's intent here.
8

9 Derick Berlage,
10 It's really no different when the Council has to have a public hearing on every item, but
11 sometimes no one shows up, but you've given them the opportunity. This would be
12 similar.
13

14 Council President Leventhal,
15 Um, um-hmm. Okay. Sure. We could hold a hearing, and we would have held a hearing
16 even if no witnesses showed up. So you could hold a meeting, you could finally, after
17 your best efforts, announce that a meeting is taking place.
18

19 Derick Berlage,
20 We can't force people to show up, but the opportunity would be provided.
21

22 Council President Leventhal,
23 Um-hmm. Okay. Did the Committee address this scenario?
24

25 Ferroll Hamer,
26 Yes. It was discussed.
27

28 Councilmember Silverman,
29 Good faith effort to have a meeting qualifies.
30

31 Council President Leventhal,
32 Okay.
33

34 Councilmember Silverman,
35 Other questions or comments on this piece?
36

37 Council President Leventhal,
38 Okay. I'm sorry. Ms. Praisner.
39

40 Councilmember Praisner,
41 I think the discussion or the debate or the detail is going to be where the words and
42 wordsmithing is going to be challenging. Because I think what Mr. Berlage is reporting
43 from a community complaint issue may be impossible to achieve from a standpoint of a
44 conversation that might occur in just a question or -- it will depend upon the way the
45 language is written and it will also depend upon assumptions of activity. So for example,

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1 you can hold a meeting with a community and have a discussion about your intent to
2 develop a property. And then as you file something, have a phone call with planning
3 staff to ask a question, that conversation between the planning staff and the developer
4 where the question is asked is not one in which the community is a participant unless
5 you're requiring the community to be in on every phone call. The reality is that what I
6 think some citizens are complaining about is that meeting that occurs between staff and
7 the developer to ask or resolve questions or issues before a site plan is filed. That kind
8 of interaction cannot completely be legislated against unless you prohibit any
9 conversation or any solicitation of dialogue back and forth. What you are doing by this
10 requirement, and the detail will be in the regulation, is requiring that there are no
11 surprises from a standpoint of a full-blown development where the community gets a
12 letter of notice that a hearing is being held and they have no clue that something is
13 going to go on. But have every absolute thing have the community involved in I think is
14 unrealistic actually. So I think we're going to have to be careful when the regulations are
15 written to be clear about what we're talking.

16
17 Ferroll Hamer,

18 We have to strike the balance, and I think we understand that.

19
20 Councilmember Praisner,
21 Right.

22
23 Derick Berlage,

24 We agree, but the preapplication meeting we believe sets the tone at the community's
25 presence at the table is strongly desired.

26
27 Councilmember Praisner,

28 And that would require that participation. That will respond to that issue. But every
29 phone call is going to have to be, you know, is just impossible to say it won't occur.
30 Okay. Mr. Knapp.

31
32 Councilmember Knapp,

33 Thank you. As everyone has said we all support the intent. This is an issue that came
34 up yesterday at a Public Safety Committee meeting where in pursuit of identifying a new
35 location for our animal shelter the County had done outreach to try and get people to
36 come to a meeting. And I think one family showed up. Now, in the course of the Shady
37 Grove master plan, we know that there are more people that are interested. But it's one
38 more meeting on one more night that most people don't necessarily have the time for in
39 the first place. So as you put together regulations, we may want to even consider not
40 necessarily having a separate meeting done by a developer or by someone at some
41 other time, but to incorporate into that the notion of going to community organizations as
42 kind of supplanting or complimenting that other activity, just so that we'll go -- people are
43 going to the community as opposed to forcing the community to go out one more night,
44 because you have to engage that dialogue somehow. I was at the meeting last night at
45 Clarksburg where the developer, well in advance of when they would typically come

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forward was coming forward with their ideas to try and engage. Which, I think, people are willing to do that, but think about that as you put the regulations together.

Derick Berlage,

We agree completely, and not to jump ahead to the last issue in the packet, which is what is the correct involvement of the Council in these regulations, we think that over time we will gain experience and we will probably need to change the approach on a regular basis, and we need the flexibility to do that quickly.

Council President Leventhal,
Okay, it's yours.

Councilmember Silverman,

Okay, sure. All right, let's go on to site plan approval, which we're on page three of today's memo. Question of what kind of document you have, what kind of documents could be finalized after the Board approves the plan. What about signature sets. There were a whole lot of issues that came out of the review of what took place in Clarksburg. Nothing in County law specifically defines the content and scope of a site plan, and there are all types of post-approval processes. The Committee recommendation, which is reflected in the legislation, is the following: That the Board resolution approving a site plan has to contain all elements of the plan and all subsidiary documents except final plan drawings. The planning staff would include all elements of the plan including its proposed findings of fact and conclusions of law, which is currently known as the draft opinion. Those should be provided in final form pending the Board's decision in the staff packet -- staff package for the Planning Board, in this Zoning Text Amendment, the language is the public hearing site plan. So that that would be available for the Planning Board -- produced by staff for the Board hearing. The plan drawings, which are also known as signature sets, may be finalized after the Board acts and must be approved by the Planning Director -- Planning Director or designee who would confirm they incorporate all requirements and conditions in the approved plan. The Board regulations also specify a post-hearing notice and approval process so that other parties to the plan hearing could review and comment on final drawings before the Planning Director acts. That was -- we had fair amount of discussion about that to ensure that there would be an opportunity for the community to review what otherwise were known as signature sets to be able to have an opportunity to comment so that they will know when there are changes that are made. That's the Committee recommendation.

Council President Leventhal,
No lights.

Councilmember Silverman,

Okay. Let me raise a question that had been raised subsequent to our Committee meetings. We have, if I understand correctly, there are time limits incorporated into the law regarding a variety of issues at the Planning Board now. And I don't think we discussed whether there's a time limit for completion of the signature sets. We had a lot

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1 of discussion about notice but, correct me if I'm wrong, theoretically, there's no time
2 limits. I'd like to get the reaction of the Planning Board to whether there ought to be
3 some type of requirements. I'm trying to find my memo on this. Mike -- or Marty, you can
4 come up here. My understanding is there are requirements right now for action and
5 disposition.

6
7 Mike Faden,

8 There's a requirement for Planning Board action, which actually shows up on Circles 7
9 and 8. It's current law; the Committee did not change it. It's essentially 45 days receiving
10 the application, unless the applicant agrees to extend the time, which frequently does
11 happen.

12
13 Councilmember Silverman,
14 Where are you reading from?

15
16 Mike Faden,
17 Top of Circle 8, line 135, 34-35.

18
19 Councilmember Silverman,
20 Right.

21
22 Mike Faden,
23 But that's for Planning Board action. There is nothing in here for the post-action process
24 of approving the drawings that you mentioned. That is basically up to the -- a
25 combination of the applicant and planning staff to determine how fast that happens.

26
27 Councilmember Silverman,
28 What are the current requirements besides that in the law now for action by the
29 Planning Board?

30
31 Rose Krasnow,
32 Rose Krasnow, Park and Planning.

33
34 Councilmember Silverman,
35 Excuse me, I'm sorry. Action by the Planning Board or its designee?

36
37 Rose Krasnow,
38 There's really nothing in the law in terms of timing for signature sets, if that's what you're
39 referring to. And it would be very difficult for us to institute one, because there's -- in
40 other words, we often will get in a signature set, redline it and give it back to the
41 applicant. It could be months before it's returned to us. Now, what we are hoping to do
42 is track very closely those time periods. In other words, when did one come in, when did
43 it go back, how long did it take for us to get it back? So that we can give you parameters
44 of a typical time line. I can tell you, we just recently became aware of one where it was

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1 received last April and sent back, and we are just now receiving it again. If an engineer
2 isn't working on that plan right now or a developer...

3
4 Councilmember Silverman,
5 Marty, did you want to comment?

6
7 Martin Klauber,
8 I think the Committee members would recall the conversation that we had about the
9 needed flexibility. A lot of the subsequent decision submittals -- I think it was mentioned
10 even a year in front of the Committee taking the developer -- meeting that time period
11 and the flexibility. And I hope the Committee members will remember the colloquy we all
12 had on it.

13
14 Derick Berlage,
15 One additional factor it is often the developer's own pace of development that will
16 determine how fast we get the drawings back.

17
18 Councilmember Silverman,
19 All right, well, what I like to do, because this came in sort of late in the process, is when
20 we take up the regulations, I guess what I'd like to Board to take a look at is -- Board
21 and staff -- is just the issue of where are there time lines that are set. Last time I
22 checked, I don't believe there's any penalty and I wasn't suggesting that, but there are
23 benchmarks. We had these challenges with regard to the issue of opinions, of issuing of
24 opinions, which we think we've collectively resolved by additional staff and that this
25 process, that we just described, and the legislative process will hopefully take care of
26 any issues relating to what we used to call opinions. We're not calling them that any
27 more. I'd like to at least understand whether through the regulations you have there's
28 some expectation. We have that with the Board of Appeals in terms of when we expect
29 them to produce opinions which...

30
31 Councilmember Praisner,
32 No, I don't think we do.

33
34 Councilmember Silverman,
35 Oh, sure we do. They're required to issue opinions within, I think it's ...

36
37 Councilmember Praisner,
38 No, they're not. There are no dates.

39
40 Martin Klauber,
41 The Hearing Examiner is required to -- within 30 days of the close of the record to
42 forward a report and recommendation to the Board of Appeals. But the Board of
43 Appeals...

44
45 Councilmember Praisner,

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1 There's no time frame.

2
3 Councilmember Silverman,

4 No. I don't mean for acting. I meant once they've acted...

5
6 Councilmember Praisner,

7 No. No. There isn't.

8
9 Councilmember Silverman,

10 ...I thought there was a requirement that they issue an opinion within 60 days.

11
12 Councilmember Praisner,

13 No, there isn't.

14
15 Martin Klauber,

16 No.

17
18 Councilmember Silverman,

19 All right. Well, let's take this -- let's take this up, because the reason I'm asking that is
20 because it becomes a challenge for us to exercise oversight if there are no benchmarks.
21 So that's really what I'm driving at, is whether or not there's some period of time in which
22 you have? I understand if the applicant is taking a year to respond back to you. The
23 question is, whether or not you take eight months to respond back. And I'm not
24 suggesting that's what you're doing. I'm just saying that I'd like to take that up in terms
25 of potential benchmarks in the regulatory process.

26
27 Ferroll Hamer,

28 One of the things we promised we would get back to you as part of the Management
29 Improvement Plan was performance standards and this would be one of those.

30
31 Councilmember Silverman,

32 Fine. Okay. Great. Okay, next item is...

33
34 Council President Leventhal,

35 Mr. Knapp?

36
37 Councilmember Silverman,

38 Oh, sorry.

39
40 Councilmember Knapp,

41 Just in looking at this one and rereading the packet, the problem identified here is,
42 "Inconsistent documents that are a part of or attached to a site plan." I just wanted, if
43 you, Derick, or you, Mike could kind of say how does this recommendation specifically
44 ensure that we don't have that problem? ...or the Chair.

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1 Councilmember Silverman,
2 I'll defer to the Planning Board.

3
4 Ferroll Hamer,
5 What's the question?

6
7 Derick Berlage,
8 I'm sorry, we were taking notes...

9
10 Multiple Speakers,
11 [INAUDIBLE]

12
13 Councilmember Knapp,
14 No, the problem -- as it's laid out in the packet on page 3. The problem says
15 "Inconsistent documents that are a part of or attached to a site plan." That's the
16 problem. So I would like somebody to explain to me how -- what the Committee
17 recommendation makes sure that -- does that problem goes away.

18
19 Mike Faden,
20 I'll take the first half and then Mr. Berlage can join in. Essentially, the idea was to have
21 everything up front when the Planning Board acts to the extent humanly possible, which
22 means a complete packet. Including everything from the applicant plus the staff's report,
23 which would include what used to be called "Draft opinion," findings of fact and
24 conclusions of law. So the Planning Board would only be able to act when it had a full
25 package in front of it. Then if changes to the drawings were needed, those would be
26 handled after the fact.

27
28 Councilmember Knapp,
29 Okay, so you'd have...

30
31 Councilmember Praisner,
32 You'd still have to read the packet and make sure...

33
34 Councilmember Knapp,
35 I was going to say that still seems a pretty fundamental element that you could have
36 inconsistent documents.

37
38 Mike Faden,
39 Sure the staff -- this doesn't guarantee anything. The staff would still have to "eagle eye"
40 all the numbers and make sure that everything is...

41
42 Councilmember Knapp,
43 But you'd have the whole packet together, so presumably you'd have no extraneous
44 information; is that it?

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1 Mike Faden,
2 Yes.

3
4 Councilmember Knapp,
5 And then, when we get to the amendment process later, we've addressed that, so that
6 you would have no -- presumably you would have no changes that would come from out
7 in left field. Everyone would be aware of it.

8
9 Derick Berlage,
10 I mean I -- the first point that needs to be made is that the Planning Board, even before
11 this legislation, has implemented so many new checks and balances, so many
12 checklists, so many requirements for a second set of eyes on data tables, on
13 dimensional drawings, both with respect to site plans and every other part of the
14 process -- record plats, preliminary plans and so forth -- that those processes ought to
15 prevent any internal inconsistencies in documents going forward regardless of the
16 legislative action. However, the question that, to the extent that approval documents
17 pertaining to the same project are separated in time, there is, at least theoretically, a
18 greater danger that there's going to be an inconsistency. Presumably, when they come
19 together there is less of a danger. Although even when they all come together. You still
20 need all those checks and balances, because as the site plan document before the
21 Board gets bigger and bigger. That's one effect of this, is to give the Board a bigger pile
22 of documents to approve at that single vote. The bigger set of documents the greater
23 the likelihood of possibility of inconsistency. Our internal checks and balances are
24 critical. They are in place. They are working. But the legislation as originally proposed
25 by Mr. Faden, seeks to have as much as possible happening at the same moment in
26 time. This legislation before you today does that, with the one exception of the drawings
27 because the Committee was persuaded. We agreed with them that the drawings simply
28 cannot be completed at the time the Board votes, they have to come later. Now, that
29 being said, I'd like the planners to add anything they think needs to be added to.

30
31 Ferroll Hamer,
32 No, I think that expresses it perfectly.

33
34 Councilmember Silverman,
35 I think the other piece is, again, sort of, you know, lessons learned. The additional staff
36 that have been put in place that we voted on at the Planning Board are specifically to
37 create more sets of eyes on documents. For example, the additional positions that we're
38 funding in development review is to intend to allow supervisors to actually supervise
39 rather than having a full case load of their own. We've got different pieces to try to get to
40 the same place. Is it possible that you could have an inconsistency? Sure. But -- 'cause
41 anything's possible. But we've limited the likelihood of that between the legislative
42 changes, the checks and balances they've put in place, and the fact that we've got more
43 sets of eyes looking at documents to catch what for argument's sake were the -- well,
44 one set of documents has feet in it and the other has stories in it.

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Councilmember Knapp,

How -- if you actually start down this road and we put this in place and it doesn't work, it takes too long, you compile too many pieces, whatever it is. How do we then refine it or modify it to make it a more workable or practical solution?

Ferroll Hamer,

Well, actually, it's amazing that you should bring this up because we have the workout teams for the development review staff as working with the management partners who are basically looking at development review systems right now as we speak. That's what they're doing. So part of the answer is, as we create new systems for development review, which we hope will both streamline and assure quality control. That is our -- that's the goal, to do both of those things at the same time. I think we can do that. If there is something in the legislation that precludes us from doing that, we'll bring it back to you so that we can make modifications, if necessary. I think the way the legislation is structured right now, which is a lot of the details, there's an outline here. And number of the details are in the rules of procedure, and that allows the Board the flexibility to deal with exactly what you're talking about.

Councilmember Knapp,

I would urge you to bring that back quickly if you find those issues because I think, and I agree with Mr. Hanson's original assessment, which is probably more should be done administratively than legislatively. Maybe at some point we want to address some things legislatively, because then we've kind of codified your practice as opposed to trying to dictate the practice before they figured out the pieces. So I would urge you to do it, see what you come up with.

Ferroll Hamer,

Thank you.

Councilmember Knapp,

Thanks.

Council President Leventhal,

Okay. Next issue, please.

Councilmember Silverman,

Okay, Consistency. The problem was inconsistent or conflicting site plan documents, lack of clarity. The Committee recommendation which is on the top of page 4 is to delete certain language. It said -- if there's any conflict between a site plan and previously approved project, et cetera, et cetera, the most rigorous provision governs. Instead we indicated that we wanted to rely on Board regulations in case by case interpretation to resolve conflicts and retain language in the current law requiring site plans to be consistent with project plans. non-illustrative elements of the plans. Et cetera, et cetera. Bottom line on all this Greek, if I can characterize it that way, is that

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1 we were convinced in listening to the Planning Board and also Mr. Hanson's
2 recommendations about keeping the word "consistent with" instead of "conformity."

3
4 Councilmember Praisner,

5 Okay. I had a concern that I raised yesterday about this issue. And my concern is that,
6 as I thought about it a little more over the weekend, the "conformity" term was only
7 being used as I read it with the Council's elements, binding elements, associated with
8 rezonings. And it seemed to me that only making that conformity associated with
9 binding elements eliminated the conformity requirements that might be associated with
10 the master plan language as to zone heights and issues on certain -- in certain
11 situations where the zone might say something but the master plan dictates something
12 else. That I would suggest "conformity" would be a more appropriate term especially as
13 Mr. Faden's reference describes that "conformity" is not intended to be identical but a
14 closer correspondence to the details. And in some cases our master plans do, maybe
15 not a lot, but our master plans do include some detail specificity. So it worried me that
16 we were only referring in a narrow sense to the use of the term "conformity." Mr.
17 Faden?

18
19 Michael Faden,

20 I think the answer to that is almost all the language you refer to is, A: in current law
21 outside the scope of this provision and would not be changed. And generally...

22
23 Councilmember Praisner,

24 So conformity exists there already.

25
26 Michael Faden,

27 It exists there, where the master plan conformity requirement...

28
29 Councilmember Praisner,

30 Okay, and the word conformity exists?

31
32 Michael Faden,

33 ...it is stated that way.

34
35 Councilmember Praisner,

36 All right. Fine. Thank you.

37
38 Councilmember Silverman,

39 Go ahead.

40
41 Councilmember Praisner,

42 Okay. No other lights. Can we move on to site plan amendments?

43
44 Councilmember Silverman,

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1 Okay, site plan amendments. This is at the heart of what I think we learned from
2 Clarksburg, which is that the validity of staff approved site plan amendments. Changes
3 were made last summer by the Planning Board, I think in June, to bump it up to the staff
4 director level. The Committee recommendation outlines further pieces of this. It requires
5 the applicant to clearly indicate each proposed amendment on the copy of the approved
6 site plan. Directs the Planning Board by regulation to define which site plan
7 amendments can be treated as minor. Amendments approved by the Planning Director
8 if a hearing is not requested, rather than defining them in the code. We had an
9 extensive discussion about that and decided that it would be better to have the Planning
10 Board come up with their regulations about that, that we could review, rather than to
11 spend what would have been an inordinate amount of time at the Council level trying to
12 figure out what was minor versus what wasn't minor, since we will effectively have
13 another chance to review that. We've specified a procedure for public notice of
14 proposed minor amendments, including -- and this is critical -- the opportunity to request
15 a hearing before the Board. And allowing, but not requiring the Board in approving a site
16 plan to designate certain features of the plan as essential elements that will always
17 require Board approval of any modification, or laying out guidelines that will have
18 minimal effect and can be modified by staff approved amendments. This is trying to
19 address the fundamental issue of making sure that the public gets notice of
20 amendments to site plans and there is a process for the community to weigh in and
21 have input.

22
23 Council President Leventhal,
24 Ms. Praisner.

25
26 Councilmember Praisner,
27 Yeah, we did receive a correspondence from Mr. Hanson, who suggested that in his
28 view, he still preferred that the minor amendments have some kind of Consent Calendar
29 approval by the Planning Board so that there is a formal conscious action by the
30 Planning Board. In retrospect, as I thought about Mr. Hanson's point, I think it's the tying
31 together everything at a Planning Board level that could obviously breeze through from
32 a minor amendment perspective, but still have the Planning Board action associated
33 with it. And I know we had discussion about what might be minor amendments and how
34 small they might be. But I have concluded that I now agree with Mr. Hanson. And so I
35 would propose an amendment to the Zoning Text Amendment that would have a
36 Consent Calendar process associated with it. Mr. Faden has copies of that amendment
37 and I would make that motion.

38
39 Council President Leventhal,
40 Second. Okay. Let's dispose of the amendment now rather than comment on the
41 general issue. We've got an amendment before us, we can get the sense of the Council
42 pretty rapidly. I would just say to any Councilmember who may be within earshot, a vote
43 is forthcoming. If staff could notify Councilmembers a vote is forthcoming. Could we
44 have comments on Ms. Praisner's amendment at this point? Mr. Knapp.

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Councilmember Knapp,

No, I thank Ms. Praisner for raising the amendment, I was going to raise a similar issue.. I'd just like to get feedback from the Chair, from Mr. Faden, as to, again, what are the practical effects of this? It seems to be -- the argument I think is rational in that we just tied all of the pieces together, that if you're going to change any of those pieces that you just bundled together, the Board ought to at least be made aware of the fact that the change is going to occur, and I think Consent process is pretty straightforward, but why wouldn't it work? Or why would it?

Ferroll Hamer,

I'd like to address this. Ferroll Hamer. Because for exactly the thing that you just brought up, which is, what are the consequences that we're doing here? Does this really work and how do we change it if you legislate it and it doesn't work? From our point of view, we expect to have about somewhere between 75 and 125 minor amendments every year. That's just a guess right now, but we think that's probably fairly accurate. Here's some typical things. I went back yesterday and looked at our list. We now keep a open list of all the minor amendments that people have applied for. Here's some typical examples: add seating, add two benches, construct a pedestrian handicap rail, eliminate two parking spaces for a backup generator, add landscaping, widen a drive aisle to a loading dock by two feet, change a freestanding gas station sign from Mobil to Sunoco. These are the type of issues we're dealing with in minor amendments. And the problem is is that when you take everything to the Board, they are all subject to appeal. So you have an applicant who's in the middle of constructing something, wants to make a minor amendment to approve the plan, like add some landscaping, now is subject to a 30-day appeal period -- has to go through an appeal process and has to go through a Planning Board -- some kind of an action that the Planning Board takes.

Michael Faden,

[INAUDIBLE] ...the process would be there in any case.

Ferroll Hamer,

You're right.

Councilmember Praisner,

It's already subject to it.

Ferroll Hamer,

But it will take longer. The point is it will stop the process. There will have to be some kind of a staff report, some kind of a Planning Board hearing advertised on the agenda, some kind of an action, paperwork to be done to show that they've taken an action. It's going to add a significant amount of time, paperwork, and bureaucracy to something that ought to be a fairly simple task.

Martin Klauber,

Mr. President?

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1
2 Council President Leventhal,
3 Mr. Klauber.

4
5 ¶ Marty Klauber,
6 Just a point of information, this Council operates a Consent Calendar. Its staff is aware
7 of the amount of time saved by the Consent Calendar. I would urge that a similar
8 situation that was recommended by Mr. Hanson be implemented per his
9 recommendation.

10
11 Council President Leventhal,
12 Okay, just to clarify where we are for the record. Ms. Praisner had offered and I had
13 seconded an amendment which is consistent with the suggestion in Royce Hanson's
14 memo that any minor amendment be placed on a Consent Calendar mechanism and
15 that any amendment to a site plan must be approved by the Planning Board itself. And
16 we're gonna vote very soon on this. Ms. Floreen.

17
18 Councilmember Knapp,
19 Hold on, hold on. I wasn't done yet, necessarily.

20
21 Council President Leventhal,
22 You're claiming back your time. Okay. Mr. Knapp has not yielded yet.

23
24 Councilmember Knapp,
25 Sorry, I just wanted to follow up on that point. We don't live the process every day. So is
26 there a way within the approval of all of this documentation? One of the issues I have
27 heard is everything has the same amount of weight in the current process. If it's adding
28 a bench or if it's making a reconfiguration to a site plan, those are equivalent in the level
29 of merit or weight that they have within the current process. And so is there a way in the
30 course of the Board's approval to address that, or by doing this, have we basically
31 eliminated that?

32
33 Ferroll Hamer,
34 Well, I think that the legislation that you have before you basically allows for that. And
35 the guidelines that are now on the web allow for that. In other words, if Planning Board
36 finds something in a site plan that they particularly don't want to change or don't want to
37 be subject to minor amendments they can define that as part of the site planning
38 process. Or if there are specific things they would like to be part of the minor
39 amendment, they can specify that, too. Probably the biggest issue Royce raised, too,
40 which is that this is going to be a disincentive for applicants to come forward with
41 improvements to the plan that are minor improvements because the process will take
42 too long and be too unwieldy, so the incentive is to just build it the way it was already
43 approved, even though it's not as good.

44
45 Councilmember Knapp,

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1 Okay, well then that begs the question, how long does it take you to do a minor right
2 now and why would that necessarily be longer if all you had to do is put the
3 documentation on a Consent Calendar?
4

5 Ferroll Hamer,
6 Because I don't believe it's just matter of putting the same documentation on Consent
7 Calendar. Anything that goes before the Board is going to -- I mean, you can answer
8 this better than I can.
9

10 Rose Krasnow,
11 Right. We get into the notice procedure. In other words, we now have with a minor
12 amendment a 15-day public notice. We notice the public. We give them 15 days to
13 respond. They can request a hearing in front of the Planning Board if they wish. If we
14 don't get such comments back then basically we write a brief memo detailing the nature
15 of the minor amendment, that it doesn't conflict with any of the findings of the Board. We
16 take it to Ms. Hamer to be signed. Therefore, that all can happen within less than a
17 month period. But if we have it put on the consent agenda, where they're going to have
18 to go through I assume a notice for the Consent agenda and some sort of response. I
19 don't know how the Council's Consent agenda works but...
20

21 Councilmember Knapp,
22 Why couldn't you go through the same process and instead of going back before Ms.
23 Hamer, it goes to the Planning Board?
24

25 Councilmember Praisner,
26 That's what it would be.
27

28 Rose Krasnow,
29 But then you can only do it on the Thursdays that they meet. And, again, you have to
30 adequate -- we're doing agendas two weeks in advance, so you might not know -- if you
31 get it in the day before or the day after we just finished the agenda, two weeks out,
32 you're going to have to wait another week. It will greatly slow down the process. And as
33 Ms. Hamer said, my real worry, 'cause we've already heard some of this, is that people
34 aren't going to come forth with changes that would actually improve the project. I should
35 add that once -- you know, we do require a new signature -- not calling it a signature set
36 any more -- but they have to obviously submit new drawings, and all of these drawings
37 will be available on the web, as will be the staff report detailing the changes that were
38 made. I still think you're going to have all the pieces together. I'm just not sure what we
39 gain by having the Board vote on them. In fact, it's going to set them in a situation where
40 they are going to need to look into things that are too minor to really deserve their
41 attention.
42

43 Councilmember Knapp,
44 Okay.
45

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1 Council President Leventhal,
2 Okay. Ms. Floreen.

3
4 Councilmember Floreen,
5 Thank you. In the -- we spent a lot of time talking about this issue in the Committee,
6 didn't we?

7
8 Unidentified Speaker,
9 Yes, we did.

10
11 Councilmember Floreen,
12 And as I recall, the draft that's before us that the Committee proposed was designed to
13 put the onus on the Planning Board, wasn't it, to make that call about what it would want
14 to see? It would make that decision when it approved something where it was important
15 to the Board, for whatever reason, that it would want to see any change whatever to it.
16 And understanding that there's other stuff on a site plan that doesn't rise to that level to
17 address that concern that you've just articulated. Isn't that right?

18
19 Rose Krasnow,
20 I think you've just summed it up very well, and it's important to remember, with respect
21 to Clarksburg, that what had happened is staff had started saying all sorts of things
22 were minor that simply were not minor. They needed to go back before the Planning
23 Board. What the Planning Board adopted in terms of their rules for major/minor, make
24 sure that will happen anything that rises above the smallest level will always go back to
25 the Planning Board.

26
27 Councilmember Floreen,
28 Well, and as I recall, what it was intended to achieve, the language in the Committee
29 recommendation is proposed really to direct the Planning Board to exercise more
30 control over the site plan at the beginning as opposed to saying, well, you know, other --
31 things can happen after the fact without any good guidelines for what changes might
32 occur. Wasn't that what we were trying to work through there?

33
34 Ferroll Hamer,
35 Yes, and we also agreed that we would publish a list of what the minor amendments
36 were so that everybody could make sure we all agreed what was actually minor, and so
37 everybody would be on the same page as to what the definition of a minor -- so it would
38 be a completely transparent process.

39
40 Councilmember Floreen,
41 When do you anticipate that that part of the work load will be forthcoming?

42
43 Rose Krasnow,
44 You mean in terms of adopting...

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1 Councilmember Floreen,
2 The minor -- the minor amendment stuff. We asked you to put together a more coherent
3 list on...

4
5 Rose Krasnow,
6 Right, and the Board had already adopted interim guidelines, and I say "interim" only
7 because as we are moving forward now we already see some things, and we need to
8 bring that back to the Board.

9
10 Councilmember Floreen,
11 Right, so all of that is already out there in terms of what the community expectation
12 would be and what the Planning Board definition would be. The idea really is that the
13 Planning Board would seize control through its approval process and identify those
14 issues that it determined to be necessary without regard to concern about delay,
15 because they're so critical to the project. Is there an appeal process from a Planning
16 Board -- a director decision right now in this? If a community member has a concern
17 about the Planning Director approves in the minor process.

18
19 Michael Faden,
20 I don't think the law would distinguish between appeals of the different kinds of
21 amendments. They would all be amendments that could be appealed, whether it's
22 approved by the Board as a major amendment or the Director as a minor amendment..

23
24 Councilmember Floreen,
25 Is it? So you're saying that...

26
27 Councilmember Silverman,
28 ...that's the case.

29
30 Councilmember Floreen,
31 ...if there is a debate
32 Michael Faden,
33 I'm sorry, are you saying appeal to the Board or appeal...

34
35 Councilmember Floreen,
36 To the Board.

37
38 Michael Faden,
39 In that case, someone would ask for a hearing and it would automatically be bumped up
40 to the Board.

41
42 Councilmember Floreen,
43 So there would still be that protection if there -- it really turned out to be a more
44 significant thing than maybe the Board might have been anticipated at the beginning
45 and there it would still be a notice process.

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1
2 Ferroll Hamer,
3 Absolutely.

4
5 Councilmember Floreen,
6 It seems to me that the idea here is trying to walk a fine line to allow projects to evolve
7 appropriately, yet respect the Planning Board's role in being the final decision maker.
8 And I think the way it's currently structured would allow the Board to seize control at the
9 beginning, as opposed to bit by bit in a piecemeal basis. I would suggest that if there
10 are problems resulting from this proposal maybe we would want to go the way Ms.
11 Praisner has recommended. But at this point, it seems to me a little premature without a
12 real track record to say the Board can't handle this or that there are complaints. I think
13 it's important to give the Board that authority to make those calls. It's very clear already
14 here that there is a priority process in place that allows the Board that authority, that
15 discretion. And ultimately that continuing jurisdiction over any debate with a staff
16 decision. I think the tension there is really respecting the fact that there can be a lot of
17 details on a site plan that really aren't the essential kinds of elements that are important
18 to a Planning Board decision. And what is proposed to be eliminated, really, is the
19 finding, as I see it here, that the Board make a decision about what's essential to the
20 plan. And I think it's important from a policy perspective to have that decision as to
21 what's really important in a plan to be identified by the Board at the get-go. The new
22 language would eliminate that and really that was the Clarksburg issue. The Planning
23 Board hadn't identified the key points of control that it needed to exercise and retain
24 immediate jurisdiction over through any process. This -- the Committee
25 recommendation, I think, takes -- takes that authority and keeps it at the Planning Board
26 and gives real clarity to the decision-making process. What's being proposed would
27 actually make it less clear what's important and what's not important. And I don't think
28 that's the intention, but that's what it would achieve.

29
30 Council President Leventhal,
31 Okay, Ms. Praisner wants to comment and, I guess, Chairman Silverman...

32
33 Councilmember Praisner,
34 Yeah, yeah, I just wanted to make a comment based on -- or a quote from Mr. Hanson
35 and that was the compelling reason that led me to, on reflection, to having been given
36 his documents within the last few days, to make that modification. As he states it, and
37 this is the point that I think is compelling to me, is that if the controlling document is the
38 Board resolution, then -- and the site plan embodies the requirements, then any
39 amendment, whether major or minor, is consequential enough to be modified by -- to
40 have the Board act on that modification. And the issue is having the Board have that
41 final stamp, so to speak, on that document. So, the hearing -- if there's an objection,
42 there would be a hearing. If there isn't an objection, it goes on a Consent Calendar. A
43 Consent Calendar process may be something that the Planning Board staff and
44 Planning Board are not familiar with -- with the exception, perhaps, of Mr. Berlage at this
45 point, but -- given experience here at the Council -- but I think that those things can --

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1 the community will already have received notice, because they have been notified that
2 there is a minor amendment, as I recall. So, the issue -- and the fact that if there is no
3 objection it will go to the Consent Calendar for "X" date for the Planning Board's
4 certification process or approval process. That is part of what you would notify the
5 community, so they will have gotten the time period for the action and they will have
6 gotten the time period of what the action is. And then the Planning Board who has the
7 final action on the resolution of this controlling document, would have the ability in a
8 very limited time period, today's discussion on the Consent Calendar had one item that
9 was pulled off and there are days when there's nothing. The Consent Calendar process
10 would allow the Planning Board to take the formal action, which is amending the
11 resolution which they adopted earlier. And that's why, as I reflected on Mr. Hanson's
12 memo to us and suggestion about this, that I thought this was the better way to go.

13
14 Council President Leventhal,
15 Chairman Silverman?

16
17 Councilmember Silverman,

18 Yes, a couple of questions. I think it's important to clarify what the appeal rights are.
19 Because my recollection of the discussion that we had with Mr. Hanson was he didn't
20 believe that amendments to site plans were appealable under any circumstances. He
21 has a very different view about what the appeal rights are of actions in front of the
22 Planning Board. So, I want to go to this question, here is a scenario. The legislation
23 passes as it is drafted. I get notice that there's an amendment being proposed. It's a,
24 quote, "minor amendment." I can -- let's just do the following, which is -- I don't do
25 anything, I don't request a hearing before the Board. The staff director -- Planning
26 Director, sorry, the Planning Director signs off. What ability is there to appeal that?

27
28 Michael Faden,
29 Maybe nobody who has standing to appeal because they did not ask for a hearing
30 before the Board.

31
32 Councilmember Silverman,

33 Okay. Then let me go to the next step, which is if you go to an appeal -- excuse me -- if
34 you go to a Consent Calendar system where everything that is a proposed amendment
35 goes to the Planning Board, then -- and I was trying to -- I will get through the language
36 here in a minute because I have a question about this -- but it goes on a Consent
37 Calendar, which, therefore, means there's no hearing. The Planning Board does not
38 have a hearing. What ability is there of someone to appeal that decision?

39
40 Michael Faden,

41 I think the answer should be the same with the caveat in both cases that, of course, the
42 applicant has appeal rights if the Board...

43
44 Councilmember Silverman,

45 Okay, well, Mr. Berlage -- well and Mr. Gardner's here also.

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Derick Berlage,
Mr. Gardner may want to weigh in. My understanding is under article -- once it's on the Consent Calendar, it is a Planning Board action and a Planning Board action may be appealed to the Circuit Court within 30 days.

Adrian Gardner,
I do think they're probably different. In the one situation, and for the record, Adrian Gardner, General Counsel for the Park and Planning Commission.

Councilmember Silverman,
Come to the table.

Councilmember Praisner,
You've got to say for the record again, because Pictron has to pick it up.

Adrian Gardner,
For the record, Adrian Gardner, General Counsel for the Park and Planning Commission. I cannot answer this question right now in definitive terms. What I can tell you, in the first situation, is that if someone failed to exhaust their administrative remedy, and the remedy would have been to ask the Planning Board for a hearing, the person is not going to have standing, much like Mr. Faden said. I think that once you put something -- you present something to an administrative body and they undertake a formal action, you're in a different ball game. But I haven't researched where the appeal rights flow under the zoning ordinance well enough to be able to answer that. So, I'm reluctant to shoot from my hip today.

Michael Faden,
The only thing I'd add to what Mr. Gardner says is that I think under the Committee approach, if the Staff Director -- the Planning Director approves an amendment, that also qualifies as a Planning Board action for appeal purposes.

Martin Klauber,
And with the Consent Calendar -- Martin Klauber, People's Counsel -- in case I didn't previously announce it, I'm sorry. With the Consent Calendar, if someone who is aggrieved by the Consent Calendar and wants a hearing has failed to object to a filing, objecting to the Consent Calendar -- that, too, is a participation factor.

Councilmember Silverman,
Well, I guess what I'm trying to understand is what -- what's the goal of the amendment? The Committee recommendation is notice to the public so the public knows what's going on. The public has an opportunity -- a public member who gets notice has an opportunity to request a hearing at the Planning Board. That's all I have to say is "I want a hearing." Therefore, the matter will go to the Planning Board. Once it goes to the Planning Board and there's a public hearing, then they will decide one way or another

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1 and then they'll have an appealable right. Why require every matter that is an
2 amendment to the site plan to go to the Planning Board? What added value is there
3 unless the suggestion is that you don't want to have any decisions made by the
4 Planning Director, period, end of sentence? No matter how minor -- no matter how
5 minor the issue is. Because right now the Committee recommendation -- you used the
6 park bench scenario. The park bench could go to the Planning Board for a hearing and
7 theoretically an appeal. The question is what's the added value of saying that there are
8 zero circumstances where the director -- the Planning Director can sign off on these
9 things?

10
11 Council President Leventhal,

12 Colleagues, I'd like to move this to a vote. The issues have been laid out. Let me just
13 comment on this myself. I seconded the motion. We have -- our consultant, Royce
14 Hanson, has suggested this. The effort of this entire enterprise is to have clarity as to
15 who is in charge. A thorough, single, complete site plan must be approved by the
16 Planning Board and any amendments, under Ms. Praisner's amendment, would be
17 approved by the Planning Board. Our People's Counsel has suggested that we should
18 adopt this amendment. We, Councilmembers, are very familiar with a Consent Calendar
19 procedure. The role of staff is critically important and the role of the Planning Director is
20 not minimized. The Planning Director will supervise the staff analysis of this minor
21 amendment. It can be facilitated in a fairly simple way. I -- I want to make a general
22 comment. We're in atmosphere, unfortunately, of intense mistrust, which is being
23 aggravated by comments from, frankly, self-appointed citizen leaders almost every day
24 in the newspaper suggesting that -- impugning the motives of actors in this process. I'm
25 very reluctant to give ammunition to the permanent critics of this process. And it seems
26 to me that this is a no-brainer, I mean we have a recommendation from Royce Hanson,
27 the People's Council is suggesting it's a good idea. I'm not going to say under any
28 circumstance like that, but in this circumstance, I don't see how I can raise my hand and
29 vote against this. I'm not going to give -- we are making a good faith effort, after months
30 and months of work, to restore credibility to a process which had badly broken down. It
31 is -- there are some fights that are not worth having. We're trying to clarify who is in
32 charge, and in this case there will be no confusion. The Planning Board is in charge. As
33 a member of the County Council, I want to tell you, I do not want the County Council
34 staff signing off on 50 cents of a special appropriation. Every special appropriation is to
35 be approved by the County Council. Most of them are noncontroversial, they don't
36 deserve a lot of discussion, we put them on a Consent Calendar, we vote them up or
37 down, with ample consultation from staff, and we rely heavily on staff, obviously. We
38 can't devote the same amount of time to every issue and so we have a Consent
39 Calendar. But at the same time we are elected and we are ultimately accountable. I
40 think the situation is the same with the Planning Commissioners. At some point, it's got
41 to be clear that the five Planning Commissioners, appointed by this body -- this is what
42 we're trying to clarify, that there is no confusion -- are responsible for site plans and site
43 plans amendments. It's not that complicated and I just don't think it's worth fighting over,
44 but more importantly, I don't want to give further ammunition to the critics who I'm sure
45 are eager to impugn the motives of this Council and suggest that we're not making a

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1 good faith effort, because I really believe that we are. And Mr. Knapp turned his light off.
2 Are you cool?

3
4 Councilmember Knapp,
5 [INAUDIBLE]

6
7 Council President Leventhal,
8 Okay, Chairman Silverman -- and I hope we can vote on this soon.

9
10 Councilmember Silverman,
11 I just -- That's fine. I want to know what we're voting on because...

12
13 Council President Leventhal,
14 We're voting on the amendment...

15
16 Councilmember Silverman,
17 No, no, I literally want to know what we're voting on. I'm having a challenge reading
18 what Mr. Faden has drafted. So, could you start and just tell us have you take out lines
19 200 through 211...

20
21 Michael Faden,
22 Yes.

23
24 Councilmember Silverman,
25 ...and why take those out?

26
27 Michael Faden,
28 Because they were based on the distinction between major amendment and minor
29 amendment, which would goes out later on in this amendment. Basically what this
30 amendment does is scrubs all references to types of site plan amendment from the
31 ZTA.

32
33 Councilmember Silverman,
34 Okay. Then in Section 2 of the proposed amendment, can you read what the language
35 is?

36
37 Michael Faden,
38 Yes.

39
40 Councilmember Silverman,
41 I mean what it would be if we approve it?

42
43 Michael Faden,
44 I could. Do you want me to go through it?

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1 Councilmember Silverman,
2 Yes, I'd actually -- 'cause I'm having a few challenges with the brackets here and the
3 double underlines. Oh, the brackets.

4
5 Michael Faden,
6 "Subsection B" -- this is 59 D 3.7, which is the amendments section. "A" wouldn't be
7 changed. "Subsection B: the Planning Board may approve any proposed site plan
8 amendment after holding a public hearing. Period.

9
10 Councilmember Silverman,
11 And then is there anything else? That's all in "B."

12
13 Michael Faden,
14 Then you go down, basically to the bottom of page 2. "Cause all of old "C" and all of
15 new "C" go out, because they define what is a minor amendment or gives the Board
16 that authority.

17
18 Councilmember Silverman,
19 So that's all gone.

20
21 Michael Faden,
22 That's all gone. So then "D" basically says the applicant -- well, I can read it -- "The
23 applicant has to post a conspicuous notice of each proposed amendment." And it does
24 not change the notice process from what the Committee recommended. Then the
25 middle of page 3, it says "Any person who received notice or any other affected person
26 as defined by the Board Regulations, if they have not filed a written or electronic request
27 for a public hearing within 15 days after the notice is sent, the Planning Board may act
28 on the amendment without holding a hearing."

29
30 Councilmember Silverman,
31 Okay.

32
33 Michael Faden,
34 And "E" -- old "E" has to do with minor amendments the Director approves, so that
35 would be irrelevant.

36
37 Councilmember Silverman,
38 And "F" is gone. Okay. Thank you. I just want to know what I'm voting on.

39
40 Council President Leventhal,
41 Those opposed to the amendment proposed by Ms. Praisner will signify by raising their
42 hands. That is Mr. Knapp, Mr. Andrews, Ms. Praisner, Mr. Perez, Mr. Leventhal, Mr.
43 Denis. Those opposed will signify by raising their hands... Ms. Floreen, Mr. Subin, Mr.
44 Silverman. The amendment carries 6-3.

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1 Councilmember Silverman,
2 All right. We are now at Item 5: Regulation Approval Process. The Committee
3 recommendation is to require all Board regulations, including rules of procedure that
4 implement the site plan approval and enforcement process to be subject to Council
5 review and disapproval, as if they were submitted under the Method 2 process in the
6 County Code. Planning Board opposes it.

7
8 Council President Leventhal,
9 There are no lights. Committee recommendation?

10
11 Councilmember Silverman,
12 Okay.

13
14 Council President Leventhal,
15 Without objection, the Committee recommendation is approved.

16
17 Councilmember Silverman,
18 All right. What do we have left, effective dates?

19
20 Michael Faden,
21 We have effective dates.

22
23 Council President Leventhal,
24 I have a question about effective dates.

25
26 Michael Faden,
27 I'll ask Mr. Klauber to pass out -- you got this in -- this amendment in your
28 supplementary packet, but just in case you don't have it handy, give it to you. This
29 amendment, which is mislabeled Staff Technical Amendment, really is an Effective Date
30 Amendment, is a result of discussions we've had since the Committee met with planning
31 staff, the I.A., other parties, basically adjusts the effective date of the whole ZTA from
32 March 1st to April 1st, as we recommended in the packet. Moves back a couple of
33 sections, which have to do with -- including the preapplication procedure and a
34 certification of zoning compliance, which goes with the application, moves those back to
35 May 1st. The effect of that would be that anybody who files an application on or after
36 May 1st would have to have done the preapplication notice and opportunity for public
37 meetings so that, in effect, that provision would take effect around April 1st. And then
38 finally the last -- the double underlined sentence at the bottom, gives the Planning
39 Board -- well, essentially, through June -- well, including the period of Council review,
40 lets the Planning Board operate under interim guidelines rather than regulations until
41 July 1st. So the Planning Board would, in effect, would have to get the regulations here
42 for Council review in June. Rather than now.

43
44 Council President Leventhal,

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1 Okay, question for Chairman Berlage is -- did you see this? I mean are you looking at it
2 now for the first time?

3
4 Derick Berlage,
5 I'm now looking at it for the first time.

6
7 Council President Leventhal,
8 Okay, maybe you want to ask Mr. Gardner, but would this provide that no pending
9 application is in violation? Does this give us enough wiggle room to get through
10 anything that's already been submitted?

11
12 Derick Berlage,
13 Do you have a copy, Mr. Gardner?

14
15
16
17 Michael Faden,
18 My answer to that is yes.

19
20 Council President Leventhal,
21 Mr. Faden believes the answer is yes. We don't want an application that's already been
22 submitted to have to start all over again under a new procedure.

23
24 Derick Berlage,
25 Certainly not.

26
27 Michael Faden,
28 No, that's not the intent here.

29
30 Council President Leventhal,
31 So does this language accomplish that goal?

32
33 Mike Faden
34 We think so. The language - The only parts of this that have -- apply to site plans
35 approved previously are the parts that have to do with enforcement and amendment.

36
37 Derick Berlage,
38 I have a different comment, which is that if we adopt interim guidelines, and then we
39 adopt permanent guidelines, which are sent to the Council and the Council has not
40 acted on those permanent guidelines, this would appear to say that there's a gap, where
41 the interim guidelines can no long be effective because it's after July 1st, but the Council
42 might not yet have acted. And with the lawyer -- I'm going to identify the problem as
43 something the lawyers need to pass on.

44
45 Michael Faden,

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1 We didn't discuss that yesterday at the staff level. And while this doesn't precisely say
2 so, my interpretation, and I think your staff is agreeing, is that the interim -- if that
3 happened, the interim guidelines would stay in effect.

4
5 Derick Berlage,
6 Well, I just submit that's very important, because we can't have a period where nothing
7 can be acted on because there's a gap.

8
9 Multiple Speakers,
10 Sure. Right.

11
12 Michael Faden,
13 If that's the sense of the Council, we could add another sentence here to so provide.

14
15 Marty Klauber,
16 Yes. Yeah.

17
18 Michael Faden,
19 The...

20
21 Councilmember Floreen,
22 You could just edit it to make that clear.

23
24 Michael Faden,
25 Right.

26
27 Multiple Speakers,
28 [CHUCKLING]

29
30 Council President Leventhal,
31 Okay, Mr. Gardner, are you going to shed some light on this, or shall we keep moving?

32
33 Adrian Gardner,
34 Keep moving.

35
36 Council President Leventhal,
37 Okay, keep moving. Well, okay, but we're about to vote on this. Does -- does counsel to
38 the Planning Board have views on this?

39
40 Adrian Gardner,
41 None.

42
43 Council President Leventhal,
44 Mr. Gardner, are you comfortable that no application already submitted will have to be
45 resubmitted as a result of this change to the effective date?

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1
2 Adrian Gardner,
3 Yes, I'm comfortable with that.

4
5 Council President Leventhal,
6 So, the record will reflect that the General Counsel to the Planning Board has
7 expressed that under this effective date, there will be no need for any pending
8 application to be resubmitted. Okay. So, without objection, the amendment is adopted.
9 Mr. Silverman.

10
11 Councilmember Silverman,
12 Okay, we've got -- Nancy, your light's on.

13
14 Councilmember Floreen,
15 Sorry.

16
17 Councilmember Silverman,
18 That's okay. We have conforming amendments, which are just on Circle 19 and 20.

19
20 Michael Faden,
21 Right, those are on 19 and 20. They basically...

22
23 Councilmember Silverman,
24 They're technical in nature, we don't need to substantively discuss them.

25
26 Council President Leventhal,
27 Okay, without objection those will be adopted.

28
29 Councilmember Silverman,
30 Okay, that is Committee recommendations as modified by the Council.

31
32 Council President Leventhal,
33 Okay, the vote -- Mr. Knapp, do you want to comment?

34
35 Councilmember Knapp,
36 Just a quick comment.

37
38 Derick Berlage,
39 Mr. President, may I make a brief...

40
41 Council President Leventhal,
42 You may, but Mr. Knapp and Ms. Praisner get to go first.

43
44 Councilmember Knapp,

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1 Yeah, the only thought I have, and this may happen anyway, but I approach this as
2 something for us to consider. I don't know what the time of the Planning Board's ability
3 to implement these elements that we're drafting -- or approving right now, but to have
4 you come back, because I still have concerns as to how much of this we're going to
5 doing legislatively versus how much administratively. And to the point we had earlier, I'd
6 like to be able to make sure that we focus on -- we're coming back and saying "Here's
7 what the practical implications of what we've done today are..." so that you can tell us
8 what's working and what's not. And we can recognize to make refinements as opposed
9 to all of a sudden nine months go, something's not working well, and it's a real pain to
10 try to do something legislatively. I'd like to proactively say now that we will come back in
11 -- or you'll give us the feedback -- six months, to come back and see what we have
12 really done and how you guys are doing it.

13
14 Derick Berlage,

15 Absolutely. I mean, our view is that we are engaged in a process of continuous
16 improvement. And I also want to say that while we have some disagreements over
17 particular parts of which you're considering today, overall we have always felt that
18 legislation was an important part of the ongoing reform effort. We want to thank the
19 Committee and the Council for their work on this package of bills. Much of what's in the
20 legislation are improvements that we, in fact, requested and will help us with our
21 ongoing internal reform efforts and we absolutely will be engaged in continuous
22 improvement and continuous review of our progress with ourselves and with you.

23
24 Councilmember Knapp,

25 Well, I say that for our benefit as much as for yours. I expect that whatever we've done
26 will require refinement. I want you to come back and tell us when it's been refined so we
27 take that action, as opposed to you kind of flailing about trying to get us to pay attention.
28 I want the onus to be back on us to listen to you.

29
30 Council President Leventhal,
31 Mr. Andrews?

32
33 Councilmember Andrews,

34 Thank you, Mr. President. Well, I'm going to support this ZTA. I think it will be a
35 significant improvement and will expand public involvement in the process and work to
36 ensure that subdivisions are built as approved. Which is the issue it's attempting to
37 address. I do think we have to remember we wouldn't have to be here if it wasn't for
38 citizen involvement -- diligent citizen involvement -- in bringing the issues to the fore and
39 not just in Clarksburg, but also in Silver Spring and Bethesda, and in other places where
40 there are apparent violations of subdivisions. So, I think that we can't say that too often.
41 We should be thankful we have so many active citizens in the County who are devoting
42 a lot of their time, more time than they should have to, to this effort and really were the
43 catalysts for all of this and we're very lucky to have them.

44
45 Council President Leventhal,

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1 Okay. The vote is on Zoning Text Amendment 05-20. The clerk will call the roll.

2
3 Council Clerk,
4 Mr. Denis?

5
6 Councilmember Denis,
7 Yes.

8
9 Council Clerk,
10 Ms. Floreen?

11
12 Councilmember Floreen,
13 Yes.

14
15 Council Clerk,
16 Mr. Subin?

17
18 Councilmember Subin,
19 Yes.

20
21 Council Clerk,
22 Mr. Silverman?

23
24 Councilmember Silverman,
25 Yes.

26
27 Council Clerk,
28 Mr. Knapp?

29
30 Councilmember Knapp,
31 Yes.

32
33 Council Clerk,
34 Mr. Andrews?

35
36 Councilmember Andrews,
37 Yes.

38
39 Council Clerk,
40 Mr. Perez?

41
42 Councilmember Perez,
43 Yes.

44
45 Council Clerk,

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1 Ms. Praisner?

2
3 Councilmember Praisner,
4 Yes.

5
6 Council Clerk,
7 Mr. Leventhal?

8
9 Council President Leventhal,
10 Yes. The vote is unanimous, 9-0. The Council now takes up Zoning Text Amendment
11 05-18.

12
13 Councilmember Silverman,
14 Thank you, Mr. President. Committee recommendation is unanimous. We put a 60-day
15 deadline in. This would authorize the Planning Board to assign matters to a -- excuse
16 me, requiring a public hearing to a hearing officer, including a Hearing Examiner in the
17 Office of Zoning and Administrative Hearings. The Hearing Examiner would provide a
18 report and recommendation of alleged violations of site plans or other plans the Board
19 approved. And the hearing officer is restricted to just hearing violation hearings and the
20 purpose of this is to deal with -- on what might be an expedited basis -- complaints that
21 are made through the inspection and enforcement process and allow for an expedited
22 process for the Planning Board to enforce alleged violations. This is comparable to what
23 the Council had done in having the Board of Appeals modify their procedures. So, it's
24 patterned after that. The Committee was unanimous.

25
26 Council President Leventhal,
27 Okay, the PHED Committee has recommended to the full Council, the enactment of
28 Zoning Text Amendment 05-18, requiring certain matters to be assigned to a hearing
29 officer relating to violation hearings. The clerk will call the roll.

30
31 Council Clerk,
32 Mr. Denis?

33
34 Councilmember Denis,
35 Yes.

36
37 Council Clerk,
38 Ms. Floreen?

39
40 Councilmember Floreen,
41 Yes.

42
43 Council Clerk,
44 Mr. Subin?



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1 Councilmember Subin,
2 Yes.

3
4 Council Clerk,
5 Mr. Silverman?

6
7 Councilmember Silverman,
8 Yes.

9
10 Council Clerk,
11 Mr. Knapp?

12
13 Councilmember Knapp,
14 Yes.

15
16 Council Clerk,
17 Mr. Andrews?

18
19 Councilmember Andrews,
20 Yes.

21
22 Council Clerk,
23 Mr. Perez?

24
25 Councilmember Perez,
26 Yes.

27
28 Council Clerk,
29 Ms. Praisner?

30
31 Councilmember Praisner,
32 Yes.

33
34 Council Clerk,
35 Mr. Leventhal?

36
37 Council President Leventhal,
38 Yes. The vote is 9-0, that is unanimous. The Council now has before it Subdivision
39 Regulation Amendment 05-05. Chairman Silverman? Thank you, Mr. President.

40
41 Councilmember Silverman,
42 This will clarify the roles of the Planning Board and planning staff in enforcement actions
43 regarding plans approved by the Planning Board. It specifies that the Planning Director,
44 rather than the Board, is the chief enforcement officer and the Board's role is to hear

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1 and decide violations issues raised by its staff or others. It was unanimously approved
2 by the Committee.

3
4 Council President Leventhal,
5 The PHED Committee recommends Subdivision Regulation Amendment 05-05. The
6 question is before the Council. The clerk will call the roll.

7
8 Council Clerk,
9 Mr. Denis?

10
11 Councilmember Denis,
12 Yes.

13
14 Council Clerk,
15 Ms. Floreen?

16
17 Councilmember Floreen,
18 Yes.

19
20 Council Clerk,
21 Mr. Subin?

22
23 Councilmember Subin,
24 Yes.

25
26 Council Clerk,
27 Mr. Silverman?

28
29 Councilmember Silverman,
30 Yes.

31
32 Council Clerk,
33 Mr. Knapp?

34
35 Councilmember Knapp,
36 Yes.

37
38 Council Clerk,
39 Mr. Andrews?

40
41 Councilmember Andrews,
42 Yes.

43
44 Council Clerk,
45 Mr. Perez?

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Councilmember Perez,
Yes.

Council Clerk,
Ms. Praisner?

Councilmember Praisner,
Yes.

Council Clerk,
Mr. Leventhal?

Council President Leventhal,
Yes. The vote is unanimous 9-0. The Council now has before it Subdivision Regulation 05-06. Chairman Silverman?

Councilmember Silverman,
Thank you, Mr. President. This amendment will codify essentially a practice that the Board had already adopted, which requires relevant Executive departments to submit their recommendations to the Planning Board, before the Planning Board will approve pending plans. This Subdivision Regulation is intended to complement and reinforce that policy, and we made a couple of technical amendments to it. 3-0: Committee recommendation.

Council President Leventhal,
Mr. Knapp?

Councilmember Knapp,
Upon review of this, my simple question at the end of the day is who's in charge? Who ultimately ends up resolving conflicts between departments and agencies? 'Cause it lays out the pieces that everyone comments, but it doesn't ever get you to a resolution point.

Councilmember Silverman,
The lead agency issue is for another day. I mean is the short answer. It is -- we are going to start that process of sorting it out. It will come back to the PHED Committee and other appropriate Committees for review, but it -- the heart of the legislative reforms do not deal with what is a continuing challenge relating to lead agencies. We were intending to try to move through these package of reforms relating specifically to challenges to who gets notice and how amendments are done to site plans as well as enforcements.

Councilmember Knapp,
So, do we have this -- I mean like it's on calendar to be moving the next few weeks?

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1
2 Councilmember Silverman,
3 Well, it might not move that expeditiously.

4
5 Councilmember Knapp,
6 Why? 'Cause It just seems that we just -- we just kind of lay this out there for everybody,
7 and we've codified it, but we still haven't resolved anything. That's my concern, that for
8 some period of time everything just kind of languishes.

9
10 Michael Faden,
11 That's an issue by issue discussion. Last time it was attacked in the early-mid-90s it
12 took a couple of years to work through.

13
14 Councilmember Knapp,
15 A couple of years to figure out who's in charge. Okay. Good.

16
17 Council President Leventhal,
18 Mr. Perez.

19
20 Councilmember Perez,
21 I believe the Haig Commission is taking up that issue, Mr. Knapp.

22
23 Councilmember Praisner,
24 No, he's in charge.

25
26 Councilmember Perez,
27 No, they haven't -- and the Cheney Commission will be taking charge of, you know...

28
29
30 Councilmember Subin,
31 Rifle ranges!

32
33 Councilmember Perez,
34 Ooh, I'm not going to touch that one!

35
36 Councilmember Praisner,
37 Duck it, duck it!

38
39 Councilmember Perez,
40 Yeah, ba-dump-ump!

41
42 Councilmember Praisner,
43 Quail it!

44
45 Councilmember Perez,

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1 Not Dan. I had one question here and one suggestion as it relates to this. I was looking
2 at recommendations from public agencies and basically this is -- I never get these -- line
3 32 on page 4. The basic question -- or concern is it says 30 days after you receive it,
4 you have to give comments. It creates an opportunity for someone to say, "Well, I got it
5 this date," or "I got it that date," or "I didn't get it yet." Under most federal laws there is a
6 presumption -- or state law, that service is at the time you transmit it. I would prefer to
7 create a presumption that 30 days after the Planning Board transmits it to other
8 agencies that you could have comments, so you don't have other agencies, well, your
9 30-day period starts next week, yours starts the week after.

10
11 Council President Leventhal,
12 Okay, so that would -- Mr. Perez, I understand you're offering an amendment on line 4,
13 which states after...

14
15 Michael Faden,
16 After the Planning Board transmits it to the agency.

17
18 Councilmember Perez,
19 Well, hold on a second. Yeah after...

20
21 Multiple Speakers,
22 [INAUDIBLE]

23
24 Michael Faden,
25 Line 35.

26
27 Councilmember Perez,
28 35, I'm looking at.

29
30 Council President Leventhal,
31 Okay, I'm in the wrong place. I'm sorry. So 30 days after the Planning Board transmits it.

32
33 Michael Faden,
34 Right.

35
36 Council President Leventhal,
37 That would be Mr. Perez's amendment seconded by Mr. Knapp.

38
39 Councilmember Knapp,
40 That would be correct.

41
42 Council President Leventhal,
43 Those in favor of the amendment will signify by raising their hands. Okay. That is
44 unanimous. The amendment is adopted. Mr. Perez?

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1 Councilmember Perez,

2 If -- I'm just asking a -- if a County agency does not submit a recommendation within the
3 allowed time, the Chair of the Board must notify the County Executive and the Council
4 President of that fact. What happens...

5
6 Councilmember Silverman,

7 We put the -- we put the appropriate -- the Department Director up in Clarksburg. I don't
8 mean the project. I mean the goal here is to make sure that the President of the Council
9 and the County Executive know so that they can go beat up on these respective
10 agencies to get a response. That's essentially...:

11
12 Councilmember Knapp,

13 The question presented was I thought I saw above, like on line 40, if such a
14 recommendation is not made by -- within the 30-day period the plan shall be deemed to
15 be approved by it.

16
17 Councilmember Silverman,

18 No, that's gone. Are you reading line 40?

19
20 Councilmember Perez,

21 Oh, the old line 40, yeah.

22
23 Councilmember Silverman,

24 It's bracketed. It's gone.

25
26 Michael Faden,

27 The Planning Board has actually -- has not been doing that for some months.

28
29 Councilmember Silverman,

30 Right, we are codifying what is now a Planning Board practice arising out of the
31 procedure they used to have, which was if you didn't get...

32
33 Derick Berlage,

34 Silence was considered...

35
36 Councilmember Silverman,

37 Right, "Silence is golden."

38
39 Derick Berlage,

40 Not anymore.

41
42 Councilmember Silverman,

43 Right, right. Exactly. So, they changed their practice and we're codifying it and this
44 essentially says that we want to make sure that these other agencies, in fact, participate

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1 in the approval process. And it will be up to the Executive branch or the Council to sort
2 of...

3
4 Councilmember Perez,

5 So, the new policy is though -- if I understand it correctly -- is after 30 days, if an
6 agency's still dragging its feet, they can hold it up.

7
8 Councilmember Silverman,
9 They can.

10
11 Councilmember Perez,

12 We will -- we'll chase them around and cajole but...

13
14 Derick Berlage,

15 I don't want to leave any misunderstanding on that score. Our current policy,
16 established administratively, but not negotiable, is that we will not approve anything
17 unless the relevant County agency has in writing signed off on the application. What this
18 legislation does is put into the County Code that current practice.

19
20 Councilmember Perez,

21 But we're also -- I guess we're codifying a fair amount of delay here. We're saying get it
22 in -- try and do it fast, but if you don't, you know, we will wag our finger -- send a note
23 home to your mother -- okay.

24
25 Council President Leventhal,

26 Well, let's strengthen the language if you want to. I just want to expedite this. Do you
27 want to say something like "Each County agency shall respond within the allowed
28 time"?

29
30 Unidentified Speaker,
31 Yes.

32
33 Councilmember Perez,

34 Yeah, unless they can demonstrate good cause.

35
36 Councilmember Silverman,

37 No, no, it's already there. In line 32 it says "Each County agency to which a plan is
38 referred must return," you know, et cetera, "with the agency's recommendations." Then
39 if you go down further...

40
41 Councilmember Perez,
42 Unless they don't!

43
44 Unidentified Speaker,
45 [LAUGHTER]

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Councilmember Silverman,
Wait, wait, wait. If you go down further to line 43, "the Board may extend a County agency's comment period for an additional 30 days if the agency requests an extension in writing and gives a substantial reason."

Council President Leventhal,
So it sounds like to me the Perez amendment is deleting, in lines 47 through 50, if a County agency does not submit a recommendation, they get slapped...

Councilmember Silverman,
Do you want to get rid of the 30-day extension provision? No, I don't mind that.

Council President Leventhal,
Just the part that says they must do this, they really have to do it, they can get an extension but, by the way, if they don't do it, we're providing for that, as well. I have no problem with getting rid of that, what Mr. Leventhal just said, because I think it... Getting rid of what?

Councilmember Perez,
Line 47 starting with "if"...

Council President Leventhal,
"If the County agency does not submit within the allowed time" the Chair of the Board has to notify...

Councilmember Perez,
Well, because it creates an...

Councilmember Silverman,
You want to get rid of the extension period, is that what...

Multiple Speakers,
No, no, no.

Council President Leventhal,
It's the extension period after the extension period.

Councilmember Perez,
That's right.

Councilmember Praisner,
They want to get rid of the County Executive learning about it.

Councilmember Perez,

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1 No, what I want to get rid is the implication that flows from lines 47 to 50...

2
3 Council President Leventhal,
4 In the law we're suggesting that agencies will not comply with the law.

5
6 Councilmember Perez,
7 Correct.

8
9 Councilmember Praisner,
10 No, we're not.

11
12 Councilmember Perez,
13 I think the implication that flows from lines 47...

14
15 Councilmember Silverman,
16 Point of order: Can I just ask which lines are you trying to get rid of?

17
18 Multiple Speakers,
19 Lines 47 through 50.

20
21 Councilmember Perez,
22 Yeah, the -- well, I'll answer -- Ms. Praisner...

23
24 Councilmember Silverman,
25 No -- okay, the reason -- okay, the reason this is in here is to provide notice from the
26 Planning Board, because of -- to us and to the County Executive, because otherwise
27 the County Council and the Executive would have no idea that the County Department
28 of Public Works and Transportation has failed to provide its response within the 30-day
29 period. That's why this is here, so that the Executive and the Council can exercise some
30 oversight.

31
32 Council President Leventhal,
33 Then let me -- I'm trying to expedite this 'cause I understand where you're going, Mr.
34 Perez. What if then, instead, "If a County agency does not submit a recommendation
35 within allowed time, the Chair of the Board must immediately notify the County
36 Executive and the Council President of that agency's failure to comply with the law."

37
38 Councilmember Knapp,
39 Let me make one -- let me make a suggestion. I think...

40
41 Councilmember Silverman,
42 That's the same thing.

43
44 Councilmember Knapp,
45 What I think you're trying to get to a deadline.

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Councilmember Perez,
Yes. Hello, yes. What about "no further extensions"?

Councilmember Knapp,
So what if we -- actually this changes kind of your current practice -- but what if you were to take 47 through 50 and put it up -- actually keep the bracketed section, 40 through 43, and add the "if a County agency" to the end of that? So effectively you've got 30 days. If you don't get it in within 30 days, you miss your opportunity and we're notifying everybody that you failed to act. We're telling -- we're tellin' mom. Well, no, but that you failed to act. So then the supervisor is aware that apparently a conscience decision was made on the part of the Department not to do something, and then they can ask that question. And you kind of blew it. You know, all we're asking you to do is within 30 days, if you can't get the response in, let you guys know. That shouldn't be that tough to do, and then you can get an extension.

Councilmember Perez,
The other way to do it, just very quickly, is to move line 40 to 43 to the end so if you don't make a recommendation within the 60 days, having got an extension, you're out of luck.

Councilmember Floreen,
But you need those comments. You need to know if the...

Councilmember Knapp,
Yeah, but you've got to give them a deadline to say you've got to get them in.

Multiple Speakers,
[INAUDIBLE]

Council President Leventhal,
Let me call on speakers, friends. Let's have one speaker at a time.

Councilmember Perez,
Isn't 60 days enough?

Council President Leventhal,
Mr. Perez has the floor.

Councilmember Perez,
I guess I would submit -- I appreciate Ms. Floreen's point, I would simply submit that let's get the train moving and 60 days is a good enough time to get it moving. So, I would...

Council President Leventhal,

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1 Are you offering an amendment, Mr. Perez?

2
3 Councilmember Perez,
4 Yes, I am.

5
6 Council President Leventhal,
7 What's your amendment?

8
9 Councilmember Perez,
10 The amendment would indicate that if -- we'll allow the extension. That's no problem.
11 But if it's the end -- if such a recommendation is not made within the 60-day, 30 plus 30,
12 then the plan shall be deemed approved by that agency.

13
14 Council President Leventhal,
15 Okay, Mr. Perez has offered and Mr. Knapp has seconded moving the bracketed
16 material in lines 40 to 43 down at the end on line 50 with the change from 30 to 60. That
17 is an amendment now pending before the County Council. Chairman Silverman?

18
19 Councilmember Silverman,
20 Well, with all due respect to the proposal, that makes no sense to me. Essentially what
21 we're doing is saying if DPWT doesn't get its act together to respond substantively
22 within 60 days, then the plan is approved. And then we're going to have exactly what
23 you had in Clarksburg, which is the -- is the alleged failure of Fire and Rescue to
24 respond at the time that the proposal was in, saying "You know what, these streets are
25 too small." I mean essentially what you're saying is, you know, the -- it used to be 30
26 days and then it's considered acquiescence. Now it's going to be 60 days. Why wouldn't
27 we hold the agency's feet to the fire to actually do what they should be doing which is
28 responding. That's what the law is intended to do. This says if the agency doesn't get
29 around to it in 60 days, tough, the Planning Board can go ahead and approve it.

30
31 Council President Leventhal,
32 Mr. Knapp?

33
34 Councilmember Knapp,
35 I -- I appreciate the comments of the Chair, but the reality is the reason that Fire and
36 Rescue wasn't at the table is because in 1997 they were asked not to be at the table,
37 and they never came back again. I appreciate the example, but I don't think it's a
38 relevant example. The challenge is for us to actually establish a deadline. Let's hold
39 people to a deadline, not say we're going to tell somebody on you. If we don't hold
40 people accountable to putting things in and then for them not responding and people
41 going ahead and them actually being held to the failure to respond or whatever the
42 result is, how are we ever going to teach people to actually do the jobs we're paying
43 them to do? That's the notion of a deadline. We tend to always move the mark around
44 here as opposed to adhering to what the deadline is that we want. We're doing the
45 same thing again. Well, 30 days doesn't work, okay. If 60 doesn't work, we're still going

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1 to wait for you to get around to getting your information into us as opposed to forcing
2 them to do it. I think if you put a hard deadline, you get to that point.

3
4 Council President Leventhal,
5 Ms. Praisner?

6
7 Councilmember Praisner,
8 I'm not sure there's a hard deadline if it goes forward without their input. Because
9 there's a hard deadline, but it's a meaningless deadline. We've hardened the process
10 and not ensured the outcome. You know, who are we punishing? The folks are going to
11 live there later on who don't get the benefit of the input of the Department. Notifying the
12 County Executive and the County President is -- and I agree, it should be at the 30-day
13 period, not at the 60-day period -- but notifying the Council President and the County
14 Executive has some accountability at that point. I don't have any problem with calling
15 the Department head to the Council's table and asking why the heck haven't you done
16 your job, and I'd like to review your performance appraisal in grade or salary increase
17 last year, or putting this as part of a performance appraisal evaluation requirement,
18 along with everything else there might be. That's where the stick is. But just saying it
19 goes forward anyway means that we're focused on process and not on the outcome we
20 want. I don't think anything should move without it, but the responsibility then moves to
21 the Executive and actually the County Executive more than the Council President, but
22 the Council President is where the bully pulpit is. So, I don't think your solution of letting
23 it go forward without that -- well, it's true, because it's public as opposed to the
24 Executive. I had another question, though, whenever we're done with that piece.

25
26 Council President Leventhal,
27 Okay, let's try, please, colleagues, to dispose of this amendment. Ms. Floreen?

28
29 Councilmember Floreen,
30 Thank you. Things happen in the regulatory world. If the Council feels that it wants to
31 take out that last sentence, "If a County agency does not respond --submit a
32 recommendation," we will tell mom, which is really what it is, fine. The fact of the matter
33 is projects might be -- a road issue may be dependent upon another road decision,
34 that's dependent on someone out of the agency. So, that sort of thing occurs
35 periodically. There's just an element of reality here that I know I'm personally not
36 equipped to address. But we want to allow the deciding bodies to address that sort of
37 thing. That's why it's written this way. I agree, let's just set a deadline and move on. This
38 is something of a tempest in a teapot.

39
40 Council President Leventhal,
41 Mr. Subin?

42
43 Councilmember Subin,
44 Given Mr. Silverman's example and Mr. Knapp's retort to that, I'm not sure it is a
45 tempest in a teapot. Because if transportation looks at something and shrugs their

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shoulders and says "I don't care," and DFRS hasn't had a chance to respond and there's an assumption that the plan is approved, and the roads are too narrow, now you've got a real problem...

Council President Leventhal,
Is the approval sequential or is it simultaneous? Would DPWT not commenting preclude it from getting to DFRS or would DFRS get it at the same time?

Multiple Speakers,
[INAUDIBLE]

Derick Berlage,
We're dealing with the issue where a site plan, for example, a complicated site plan comes before the Planning Board. For the Planning Board to act on the site plan, we need the input from a whole host of agencies. And in the past, the rule was if an agency didn't comment that was deemed consent and the Board could approve it if it had no other problems. Administratively, as Chairman, one of things I have instituted is we will not schedule an item until every agency has signed off in writing on their respective jurisdictional requirements. What this does is codify that current practice. And if it's not codified, I suppose in the future someone could sue the Planning Board and say, "You've got to approve this even though you don't have the comments of Agency 'X' because the law says you do." That's why this is important to change.

Councilmember Subin,
Well, it still doesn't answer the question that the President asked. Is it sequential or concurrent?

Michael Faden,
It's generally concurrent.

Councilmember Subin,
So, then, if DFRS, in Mr. Silverman's example, should wait until day 28 to send its comments in, then DPWT essentially has two days to respond.

Council President Leventhal,
What they're responding to, Mr. Subin, as I understand it, is the plan...

Councilmember Subin,
The streets are too narrow, you can't have any...

Council President Leventhal,
No, no, they're all responding to the same thing. That is the plan. They're not responding to each other's responses.

Michael Faden,

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1 Right.

2
3 Council President Leventhal,
4 They may not have each other's responses, you're correct about that. They're
5 responding to the plan as sent to them.

6
7 Councilmember Subin,
8 Then that's a problem.

9
10 Michael Faden,
11 Then they come after that...

12
13 Councilmember Subin,
14 That's the problem.

15
16 Councilmember Floreen,
17 That's the next section.

18
19 Michael Faden,
20 Yeah, that's the next section. After that, they all sit down at the Subdivision Review
21 Committee.

22
23 Marty Klauber,
24 Where they're reconciled.

25
26 Council President Leventhal,
27 Okay. Rose Krasnow.

28
29 Rose Krasnow,
30 When we send this out for comment by the different agency, everyone is looking at it
31 concurrently. We, in fact, have been in a situation lately where we will see we haven't
32 gotten your comments yet, we're approaching the day, we hope to schedule it. If you --
33 to address your concern. If they're going to come forward with something that's going to
34 change everything, then clearly once we get those comments we will have to delay it.
35 And that has, indeed, occurred of late where suddenly they say we're not going to have
36 any problems, but on day 29 they send us something that would require that certain
37 things be revised to meet what they said. But that's extremely important and we'd rather
38 delay it and get those comments reflected and draft the necessary conditions rather
39 than find out after the fact that as the lead reviewer without the expertise in something
40 like Fire and Rescue, we've approved something that would not in fact have gone
41 forward. If they come forward at the last moment and there is a problem, we will delay
42 the plan and fix it and other agencies would have time to react, as well. It's not just
43 getting comments, clearly, if there's something that needs to be changed we will then
44 change it. But for us to move forward as the lead reviewer without those comments,

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1 puts us in the unenviable position of then being asked why did we approve something
2 when there are all of these issues.

3
4 Councilmember Subin,

5 So, then within each stage, it is concurrent and you won't move to stage 2 until
6 everybody is there who should be there.

7
8 Rose Krasnow,

9 That's correct, and we have a check list that now goes with every...

10
11 Councilmember Subin,

12 And who do you -- do you notify the County Executives... themselves? Does somebody
13 send a letter, "Dear Second Floor, Agency "X" wasn't there and Agency "Y" can't make
14 a decision"?

15
16 Derick Berlage,

17 At the current time, staff talks to their counterparts. If that doesn't work we talk to the
18 Director, if that didn't work, yes, I guess I would contact the Executive. It hasn't gotten to
19 that point yet.

20
21 Council President Leventhal,

22 But you're not doing that now because it's deemed approved now under current law.

23
24 Rose Krasnow,

25 Well, it hasn't been set policy.

26
27 Council President Leventhal,

28 Oh, then under the new policy, right.

29
30 Councilmember Silverman,

31 This would just codify what they're doing right now. But thus far it hasn't arisen. Are you
32 getting responses from every agency now under your new policy and you were not
33 before?

34
35 Rose Krasnow,

36 We are certainly getting comments from agencies where we were not before. Now
37 we've had to pull plans off because we did not get it in time to move forward. That's
38 always very frustrating, but I think -- the important thing I think is that the message is
39 getting out there that deadline is a deadline and that we are not going to go forward if
40 they just ignore their need to submit.. It is a new added pressure and people need be to
41 aware of that.

42
43 Council President Leventhal,

44 Some agencies may need to develop a consent procedure of their own. They could just
45 have a form letter saying "We received Application "XYZ" and we have no comment."

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1 And just routinely -- for many of them there will be no comment. But the haven't -- prior if
2 they had no comment, they wouldn't submit a comment. Now, to fulfill the requirements
3 of the law they will have to have a form response that says. "We've reviewed it, we have
4 no comment." But you'd have to get that. Okay. Ms. Praisner?

5
6 Councilmember Praisner,
7 I -- the other question that I had relates to...

8
9 Council President Leventhal,
10 No, no, let's vote on this original amendment.

11
12 Councilmember Praisner,
13 Oh, okay, fine. That's what my light is on for.

14
15 Council President Leventhal,
16 The amendment by Mr. Perez is pending before the Council. Those in favor will signify...

17
18 Councilmember Floreen,
19 Could you state it again?

20
21 Council President Leventhal,
22 Could the clerk state the amendment?

23
24 Councilmember Floreen,
25 Does it include -- put in the language "then otherwise it's deemed to be approved"?

26
27 Council President Leventhal,
28 It does restore that language, yes.

29
30 Councilmember Denis,
31 That it's deemed to be approved?

32
33 Councilmember Silverman,
34 Yeah, within 60 days. Adding back in 40 through 43.

35
36 Councilmember Floreen,
37 That's what I wanted to clarify.

38
39 Councilmember Silverman,
40 [INAUDIBLE] ..."not made within the 60 day period, the plan shall be deemed
41 approved."

42
43 Council President Leventhal,

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1 Okay. Those in favor of the amendment will signify by raising their hands. That would be
2 Mr. Knapp and Mr. Perez. Those opposed will signify by raising their hands. That would
3 be...

4
5 Councilmember Silverman,
6 Tom!

7
8 Multiple Speakers,
9 [LAUGHTER]

10
11 Council President Leventhal,
12 ...Mr. Andrews, Ms. Praisner, Mr. Denis, Ms. Floreen, Mr. Subin, Mr. Silverman, and
13 myself. The amendment -- come on, we're almost done, guys, keep it together -- The
14 amendment is defeated by a vote of 7-2. Ms. Praisner?

15
16 Councilmember Praisner,
17 Is there not a role for the Department of Environmental Protection as it relates to water
18 quality and special protection area issues where they might want to comment on the site
19 plan? No? Why, because Robert does it all?

20
21 Councilmember Perez,
22 He probably does that in terms of his part.

23
24 Councilmember Praisner,
25 Well, I just want to make sure.

26
27 Robert Hubbard,
28 Robert Hubbard, Department of Permitting Services. Special Protection Area and
29 Stormwater Management/Water Quality are all through the Department of Permitting
30 Services.

31
32 Councilmember Praisner,
33 Through the Department, but you would consult with...

34
35 Robert Hubbard,
36 We'd consult with the Department of Environmental Protection.

37
38 Councilmember Praisner,
39 And there's no issue about that consultation?

40
41 Robert Hubbard,
42 No, there is not.

43
44 Councilmember Praisner,
45 That occurs automatically.

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1
2 Robert Hubbard,
3 Correct.

4
5 Councilmember Praisner,
6 Okay. Thank you.

7
8 Council President Leventhal,
9 The vote is on Zoning -- oh, whoa, Mr. Andrews.

10
11 Councilmember Andrews,
12 I want to complement you, Mr. President, on doing a good job on herding cats on this.
13 This package of ZTAs addresses a fairly -- a very important, but just one aspect of the
14 development issue and I just want to note that because it's not always obvious. But this
15 deals with how subdivisions are implemented and the public involvement in that
16 process; that's really what this gets at. It does not address, it's not meant to address the
17 issues of whether development is occurring too fast overall or whether developers are
18 paying their fair share. Those are important issues, looming issues the Council -- those
19 are here where we have the ability to decide those. Those are not decided by the
20 Planning Board. I think it's important to point out what this is meant to address. I think it
21 is an improvement but it doesn't address the other issues, which I think the Council
22 needs to address.

23
24 Council President Leventhal,
25 Thank you for the compliment, Mr. Andrews. We are now voting on Subdivision
26 Regulation Amendment number 05-06. The clerk will call the roll.

27
28 Council Clerk,
29 Mr. Denis?

30
31 Councilmember Denis,
32 Yes.

33
34 Council Clerk,
35 Ms. Floreen?

36
37 Councilmember Floreen,
38 Yes.

39
40 Council Clerk,
41 Mr. Subin?

42
43 Councilmember Subin,
44 Yes.

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1 Council Clerk,
2 Mr. Silverman?

3
4 Councilmember Silverman,
5 Yes.

6
7 Council Clerk,
8 Mr. Knapp?

9
10 Councilmember Knapp,
11 Yes.

12
13 Council Clerk,
14 Mr. Andrews?

15
16 Councilmember Andrews,
17 Yes.

18
19 Council Clerk,
20 Mr. Perez?

21
22 Councilmember Perez,
23 Yes.

24
25 Council Clerk,
26 Ms. Praisner?

27
28 Councilmember Praisner,
29 Yes.

30
31 Council Clerk,
32 Mr. Leventhal?

33
34 Council President Leventhal,
35 Yes. The SRA 05-06 is adopted unanimously, a vote of 9-0. We have a group of
36 constituents that's been patiently waiting to meet with us. We also have eight witnesses
37 for the public hearing. So, I'm only going to give us 35 minutes for lunch. The public
38 hearing will commence at 2:00 p.m.



1 Council President Leventhal,

2 Okay, good afternoon, ladies and gentlemen. This is a continuation of the public hearing
3 on Bill 1-06: Personnel Special Days of Commemoration. Which would make certain
4 legislative findings regarding the religious, ethnic, and cultural heritage of County
5 residents, designate days of commemoration, authorize the Chief Administrative Officer
6 to designate certain days of commemoration, require the Chief Administrative Officer to
7 provide certain notice to County employees, regarding days of commemoration, and
8 generally amend the law relating to County employees and the religious, ethnic, and
9 cultural heritage of County residents. A Management and Fiscal Policy Committee work
10 session is tentatively scheduled for March 9th at 2:00 p.m. Persons who wish to submit
11 additional material for the Council's consideration should do so by the close of business,
12 Friday, March 3rd. Before beginning your presentation, please state your name clearly
13 for the record. We have two panels on this bill. The first consists of Joe Adler, Chung
14 Pak, Wilbur Friedman, David Yao, and Rabbi Sarah Meytin. Mr. Adler, when you're
15 ready, press your button and begin.

16
17 Joe Adler,

18 Thank you, Mr. President. Good afternoon. For the record, my name is Joe Adler,
19 Director of Human Resources for Montgomery County government. And I'm here on
20 behalf of the County Executive Doug Duncan to testify in support of Bill 1-06: Special
21 Days of commemoration. In his written testimony in front of you all for what I'm about to
22 summarize here, but that the County Executive strongly believes that the legislation is
23 important, because it recognizes and celebrates the ethnic and religious diversity that
24 we enjoy in Montgomery County. The County government recognizes this diversity and
25 allows employees either to use leave for work or alternate work schedules for religious
26 observance. Most County employees have three days of personal leave that they can
27 use for this purpose. Under Section 15-3 of the Personnel Regulations and Article 13 of
28 the MCGEO Agreement, an employee who needs to make up for work for loss time due
29 to religious observance can work additional hours to make this up. In addition, our
30 managers and direct service employees have received mandatory training in
31 understanding cultural and religious diversity and ways to recognize and support this
32 diversity in the workplace. We believe this legislation will appropriately complement and
33 support the initiatives while we have some concern about certain technical provisions of
34 the legislation, we believe that they can be adequately addressed during the Committee
35 work session. We look forward to working closely with you, Mr. President, and the
36 Council in its deliberations on this very important legislation and thank you for the time
37 and the opportunity to present the views of the administration.

38
39 Council President Leventhal,
40 Thank you. Chung Pak?

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1 Chung Pak,

2 My name is Chung Pak, I represent the league of Korean-Americans of Maryland, and
3 the, and also the Maryland Coalition for Recognition of Asian Lunar New Year. County
4 Council President George Leventhal and the members of the County Council, on behalf
5 of the Maryland Coalition for Recognition of Asian Lunar New Year and the Korean-
6 Americans of Maryland, we would like to urge you to pass County Bill 1-06 recognizing,
7 among other things, Asian Lunar New Year as a commemorative day in Montgomery
8 County. Maryland Coalition for Recognition of Asian Lunar New Year is composed of
9 over 100 Asian-American organizations, most of which are from Montgomery County,
10 and the names of these organizations are attached to the written testimony for your
11 information. If you can look at the second page. It has the list of all the organizations
12 which are supporting this bill. As you may know, Asian-Americans have made
13 significant contributions to the economic and political vitality and cultural richness of
14 Montgomery County, Maryland, and our country great in the field of science,
15 engineering, education, medicine, business, and the arts. They have played significant
16 role in every aspect of every day American life from building transcontinental railroad to
17 information highway and defending Democracy and freedom in this country. They
18 served in Civil War to recent Iraq War, sacrificing their lives for their families, neighbors,
19 and our great country. The most decorated unit in the U.S. military history, 142nd
20 Battalion, for example, was not only made up of Asian-American soldiers, but led by an
21 Asian-American leader Colonel Yung [Okin] during World War II. The population of
22 Asian-Americans in Maryland grew from 4% to 4.7% in 2004, which reflects an increase
23 of 19.4% Asian-Americans. In Montgomery County, Asian-American population grew
24 even larger. They grew from 11.3% in 2000 to 13.1% in 2004. They are the second
25 largest minority community behind the African-American community in Montgomery
26 County. The Coalition and League of Korean-Americans of Maryland believes that
27 recognizing Asian Lunar New Year and other ethnic commemorative days listed in the
28 bill, will help sensitive and appreciate multiculturalism in Montgomery County, thus help
29 educating our population to work together in a productive manner. We also believe that
30 the passage of this bill would send a clear message that we all are an integral part of
31 this County and nation and we should not be ashamed of our heritage and identity. This
32 message is especially important to children who may look different from others, giving
33 them pride in their heritage and identity. Coalition composed of over 100 organizations
34 together with the league of Korean-Americans of Maryland respectfully request County
35 Council to vote favorably on County Bill. Thank you.

38
39 Council President Leventhal,
40 Thank you. Will Friedman.

41
42 Wilbur Friedman,
43 I'm here representing...

44
45 Council President Leventhal,

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1 Press the button, Will.

2
3 Wilbur Friedman,

4 Oh. Okay. I'm here for Lily Qi, the President of Organization of Chinese-Americans
5 greater Washington, DC chapter, who is stuck downtown. And I'm here to support; this
6 is her statement that I'm reading. "For a long time, Asian-Americans, many of whom are
7 immigrants, have had little voice, our traditional cultural values tend to hold us back and
8 our lack of collective political power makes us afraid to asking for anything. Having the
9 Lunar New Year commemorative day will make us feel that we have a voice and that it
10 is heard. America has a multi-cultural face, but a white image. Asian-Americans are
11 often perceived as perpetual foreigners, even if many were born and raised in this
12 country and the only language this speak is English. As a mother and an immigrant,"
13 says Ms. Qi, "I have had many conversations with my son who has to reconcile his
14 "American-ness" with his Asian face. I believe that having his parents' heritage honored
15 and openly celebrated by mainstream America will teach youngsters like my son that
16 celebrating one's heritage is not backward or weird, that one does not need to
17 denounce one set of cultural traditions and values in order to fit in, and that being an
18 Asian-American does not make you some how less American." Skipping down, "Giving
19 us a choice to take the day off as a personal leave day from work without feeling guilty
20 or having to justify it is what I and many Asian-Americans hope that this bill can
21 accomplish. Though not considered a religious holiday, the Lunar New Year carries
22 significant spiritual meanings to those of us who observe it. It is the most important
23 holiday for us spiritually and culturally. Changing demographics often lead to change of
24 public policy. Today, Asian-Americans are only among the fastest growing population in
25 Maryland and we are also the backbone of many industries that define Maryland's core
26 economies. To us, Marylanders and members of citizens of Montgomery County, having
27 an LNY day is a symbol that our state and our County is ahead of the curve. It will make
28 Maryland an even more attractive place to live, work, and do business, not only for
29 Asian-Americans, but for all Americans who want to be accepted and embraced for who
30 they are. As countries like China and Vietnam become increasingly important economic
31 partners with our country, it is critical that we prepare our people, not just
32 technologically, but culturally to compete in the 21st century. Why do we need an LNY
33 day when we already have an Asian-American Heritage Month? The answer is the
34 Asian-American Heritage Month is an institutional celebration, and thank you for
35 listening to our community's voice and I urge you to vote favorably on the bill." Thank
36 you.

37
38 Council President Leventhal,
39 Thank you, Mr. Friedman. David Yao.

40
41 David Yao,

42 Good afternoon, my name is David Yao. I've been a resident of Montgomery County for
43 about 25 years. [INAUDIBLE]

44
45 Council President Leventhal,

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1 You need to press your button, no don't start over. My mistake, I should have called that
2 to your attention before.

3
4 David Yao,

5 That's fine. Even though Asians have played a significant part of this nation's destiny
6 since the mid-1800s. Americans of Asian descent are often perceived as perpetual
7 outsiders, and it sets us apart from mainstream American society. I believe having an
8 official County day of commemoration for Lunar New Year will help redress the skewed
9 view of Asian-Americans community. It is my understanding that the countywide day of
10 commemoration will have no financial burden to the County, and it is also my belief that
11 the benefits in terms of community relations and the quality of life, for many County
12 residents will far outweigh any potential costs. A declared countywide day of
13 commemoration will draw attention to the traditional culture and practices of Asian-
14 Americans. Through this attention we can invite mainstream America to join us, to join
15 us in our celebration and to learn about our values. It is through education of the
16 majority that we, as the minority, can present ourselves as part of the intricate American
17 tapestry that makes up the County, the State and the Nation as we know it today. Lunar
18 New Year is a time of celebration, as well as a time for reflection and the firm -- and
19 affirmation of family values. Like Yom Kippur, Rosh Hashanah, and Thanksgiving all
20 rolled into one. Individuals reflect on what they've done in the past year and make
21 resolutions for the coming New Year. Traditionally for the Chinese, no matter what one's
22 actual birth day is, everyone adds a year to his or her age on New Year's Day. A year
23 older and hopefully a year wiser. Families get together to clean house, dine together
24 during New Year's Eve, and visit friends on New Year's Day to affirm friendships. For
25 traditional Asian culture, Lunar New Year is a time for hope and renewal. Many Asian-
26 American youth born and growing up in this country often do not have the opportunity to
27 learn about the richest of their Asian roots. Exposed to the Euro-centric/American
28 culture, many Asian-American kids feel alienated because they simply do not
29 understand self-worth and their place in the American society. It is ironic for me that by
30 participating in community service that I too, learn from my fellow community volunteers
31 about my own cultural heritage and to fortify my own sense of cultural pride. Although I
32 was born in Hong Kong, I left at an early age to attend middle school and high school in
33 the United Kingdom, after which I came to the United States...

34
35 Council President Leventhal,

36 David, we have your written remarks. So, we're not going to be able to let you get
37 through the whole thing, but we're glad you're here, and we have your written remarks.

38
39 David Yao,

40 Thank you, thank you very much.

41
42 Council President Leventhal,

43 Thank you so much. Rabbi Sarah Meytin.

44
45 Rabbi Sarah Meytin,

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1 Hi, excuse me, I'm sick. I'm Rabbi Sarah Meytin, Assistant Director of the Jewish
2 Community Relations Council of Greater Washington. The JCRC represents the
3 organized Jewish community of Maryland, Virginia, and D.C. We are supporting this bill,
4 creating special days of commemoration. We feel that we are blessed to live in a
5 County with such a large diversity and the sharing of such diverse cultures, languages,
6 and religions enriches our lives. However; we so often see others who celebrate
7 different holidays or cultural events and are unsure the appropriate way to greet them or
8 congratulate them or let them know we wish them well. This bill would enable us to
9 learn more about one another and share in one another's most important days, bringing
10 us closer to one another. It would be wonderful for non-Jews to learn how to say Shana
11 Tova or Happy New Year on Rosh Hashanah, and for me to learn the appropriate
12 greetings or well wishes would be on the Lunar New Year, so that I might reach out to
13 my Asian neighbors, to make new friends, and try to build more bridges between our
14 communities. As I said, I believe that we are blessed to live in such a richly diverse
15 community and County and this bill would allow County employees to better appreciate
16 and benefit from that diversity. I would just respectfully request that the bill be amended
17 to include a requirement that the information that is shared with the County employees
18 also be posted on the County web site, so we all might learn from it and be able to
19 benefit from it. Thank you.

20
21 Council President Leventhal,
22 Great. Okay, thank you very much. Sir, I don't have you on the list at this point. Are you
23 Mr. Tran?

24
25 Thomas Tran,
26 Tran, yes.

27
28 Council President Leventhal,
29 You're in the next group Mr. Tran, so you'll speak in just a moment. Let me -- there's a
30 question for this panel. Mrs. Praisner?

31
32 Councilmember Praisner,
33 Actually it's a comment for Mr. Adler. Your testimony says you have some questions
34 about some of the language of the testimony. Can you highlight in what areas so that I
35 have an understanding of what those are.

36
37 Joe Adler,
38 Again, we do support the legislation.

39
40 Councilmember Praisner,
41 I understand that, you said that.

42
43 Joe Adler,
44 There's some concern about the workload for CAO in terms of the two-week notification
45 for...

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Councilmember Praisner,
The timing of the notification and all of that.

Joe Adler,
So, there is some concern that was expressed by our legal folks that the CAO may not be the most appropriate person to speak about the significance of certain holidays, that the CAO might not be aware of, and we need to get some kind of a community input to make sure that the information that's put out is accepted information, rather than something that by just because he uses a wrong word or a wrong phrase, insults rather than enlightens.

Councilmember Praisner,
Okay, well I prior to, in order for us to expedite the bill, which is why I was asking you for specificity, I would hope that , I saw some documents from the County Attorney raising questions. I would just hope you would get those and have that communication with Ms. Boucher before the meeting such that we might be able to, you know, not have to say we will get more information and come back and we have a delay in processing the legislation.

Joe Adler,
We've met with Ms. Boucher once and expressed our concerns and I communicated...

Councilmember Praisner,
All right, and we had a suggestion or request for posting on the website. I'm not sure what technicalities may be associated with that. So, if you could be prepared to respond to that, as well, and the Council's Attorney and County Attorney, it would be helpful, as well. The packet on the legislation does not have any information on where or there might be comparable jurisdictions that have similar legislation or similar regulation. I could see where this might not be dealt with from a legislative perspective, but might be dealt with from an administrative or regulatory perspective, perhaps elsewhere. So, in responding to the question or the packet where it says has been requested, et cetera, as far as jurisdictions that have similar laws, I think the question is are there jurisdictions that deal with this, not with a law in the code perspective, but from a regulatory requirement, so, for example, a resolution or an administrative regulation. That would be helpful are us to have, as well. Thank you.

Council President Leventhal,
Thank you, Mrs. Praisner. That's it for this panel. Thank you very, very much for your testimony. Very helpful. The next panel includes Mr. Henry Lau, Mr. Azad Ejaz, and Mr. Thomas Tran. Is Mr. Lau here? Very good, Mr. Lau when you're ready you can press your button, please and begin.

Henry Lau,

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1 Good afternoon, my name is Henry Lau, President of Coordination Council of Chinese
2 American Associations, CCCAA. CCCAA is an organization with 29 member
3 associations with a total of more than 5,000 individual members. We are registered in
4 Maryland as a non-profit organization under IRS code 501-63. Most of our members are
5 Montgomery County residents. First I would like to thank the County Council for holding
6 this hearing today. CCCAA initiate the Lunar New Year recognition campaign in
7 Montgomery County in late 2004. As you know, Lunar New Year is the most important
8 festival for many Asian-Americans. It is the day for family reunion and celebration with
9 family members and close friends. It's like, as if we could combine Thanksgiving,
10 Christmas and New Year all together on one day. Over the last decade, the Asian-
11 American community has grown substantially in Montgomery County. They chose
12 Montgomery County as their home because they believe this is the best place for them
13 to live and to raise their family. Many Asian-Americans are highly educated and work as
14 medical doctors, scientists, engineers, attorneys, I.T. professionals, finance experts,
15 business owners. They work both in a public service and private sectors. They believe
16 that it will be appropriate for Montgomery County to officially designate Lunar New Year
17 as a day of commemoration. Asian-Americans throughout our County would be highly
18 honored if the County Council passed the County Bill 1-06. Ladies and gentlemen, we
19 are the greatest country in the world today. Not because we are the most powerful, but
20 because we are the most inclusive, the most passionate, the most tolerant. What is
21 happening in this room at this moment can happen only in America. A land of freedom
22 and opportunity for all. Only in America can they openly petition the governmental body
23 to honor the culture and heritage of an ethnic group without fear of persecution. Only in
24 America can these people openly and freely celebrate festivals that originate in other
25 parts of the world. Ladies and gentlemen, America is a country of immigrants. The
26 American culture is the culture of immigrants from Europe, Africa, Asia and other
27 countries from the American continents. Over the years, the American culture has been
28 enriched many times by accepting the cultures that immigrants brought to America. We
29 strongly believe that our American culture will be further and rich in Montgomery
30 County, when a County Council designates Lunar New Year as a day of
31 commemoration. As you are probably aware, both the Maryland Senate and the House
32 of Delegates have already passed legislation, making the Lunar New Year a day of
33 commemoration and the bill will soon be sent to the governor for a signature. Since
34 Montgomery County has the largest Asian-American population in the state, we urge
35 the County Council to quickly pass a similar legislation.

36
37 Council President Leventhal,
38 Thank you. Very good. We have your written testimony.

39
40 Henry Lau,
41 Yeah, okay. Thank you.

42
43 Council President Leventhal,
44 Thank you, very, very much. Glad you're here. Mr. Ejaz?

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1 Azad Ejaz,
2 I'm Dr. Azad Ejaz from Muslim Community Center. I'm sorry, I didn't know I had to
3 prepare something in here, so, there is no penalty for being brief, right?

4
5 Council President Leventhal,
6 No penalty, no, for being brief? No.

7
8 [LAUGHTER]

9
10 Unidentified Speaker,
11 You get points!

12
13 Council President Leventhal,
14 We will give you holiday!

15
16 Multiple Speakers,
17 [LAUGHTER]

18
19 Azad Ejaz,
20 Mr. President, members of the Council, ladies and gentlemen, good afternoon. My
21 name is Azad Ejaz, and I'm the current President of the Muslim Community Center
22 located in Silver Spring, Maryland. On behalf of my community I would like to thank the
23 members of this Council for addressing a long pending issue of treating the Muslim
24 Holidays imperative with other religious holidays. By introducing Bill 1-06 concerning
25 special days of commemoration, this Council has proved that it will do everything in its
26 power to protect the religious, ethnic and cultural heritage of the residents of this great
27 County. This bill may not address all the demands of all the ethnicities that call
28 Montgomery County their home, but it is certainly the first and most significant step in
29 the right direction. The Muslim Community supports the bill because it not only includes
30 two of the most important Muslim holidays in its list of special days, but it also
31 recognizes the important days of many other religion, ethnicities, and cultures living in
32 this County. By showing your sensitivity to other cultures, religions and ethnicities, the
33 County Council will certainly earn the well-deserved respect of the residents of this
34 County that thrives on the diversity. I'm thankful for the opportunity to speak here today
35 and god bless for your efforts to make Montgomery County the greatest County of this
36 great country. Thank you.

37
38 Council President Leventhal,
39 Thank you very much. Mr. Tran?

40
41 Thomas Tran,
42 Good afternoon Chairman Leventhal and members of the Montgomery County Council.
43 My name is Thomas Tran, I'm the Executive Director of the Maryland Vietnamese
44 Mutual Association and a member of the Maryland Coalition for the Recognition of
45 Asian Lunar New Year. We ask that you support Bill 1-06 to designate the Asian Lunar

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1 New Year as a day of commemoration in Montgomery County, Maryland. Lunar New
2 Year is the first new moon of the Lunar New Year, it is celebrated in the United States
3 by millions of Asian-Americans of Chinese, Korean and Vietnamese ancestry. For
4 thousands of years it has been one of the most important traditional holidays observe
5 because although, it is not considered a religious holiday, it carries cultural and spiritual
6 meanings to those who observe it, to celebrate the coming of spring. For example, the
7 Vietnamese-Americans believe that what you do on the Lunar New Year will set the
8 tone for the rest of the year. So, if you have to work on the first day of the year, you
9 have to work hard, the rest of the year. Despite this auspicious day some Asian-
10 Americans feel embarrassed to request a vacation day to observe the Lunar New Year
11 because it is not officially recognized by Montgomery County government. Making Asian
12 Lunar New Year an official day of commemoration would allow many Asian-Americans
13 to observe this traditional holiday with pride and help educate all the Americans about
14 the diversity and richness of different cultures. Asian-Americans have made significant
15 contributions in many fields, including business, education, science, engineering, sports,
16 government, and the military. One example is Corporal Bin [Not-Lay] a Vietnamese-
17 American who made the ultimate sacrifice for his country in the Iraq on December 3rd,
18 2004, while defending his post from a suicide bomber. Corporal Bin was interred at
19 Arlington National cemetery. There are still a number of Vietnamese-Americans serving
20 in Iraq. This past Lunar New Year was January 29, 2006, was also -- which is also the
21 year 4,704, the Year of the Dog. A Vietnamese-American television organization raised
22 money and sent Vietnamese-American soldiers a Tet -- this means a Vietnamese New
23 Year -- care package to lift their spirits. They were grateful that they were remembered
24 on Lunar New Year and a number of them sent back e-mails, expressing their gratitude
25 along with their pictures.

26
27 Council President Leventhal,
28 Very good. Thank you all for your testimony. There are no questions. We appreciate
29 you being here. Feel free to participate when the MFP Committee takes up the
30 legislation. Okay, now before the County Council there is a suggestion, a request
31 actually, from the Executive Branch that a closed session be held.

32
33 Councilmember Praisner,
34 We have a supplemental.

35
36 Council President Leventhal,
37 Oh, we have a supplemental. I'm sorry, we have a hearing on the supplemental, of
38 course we do. Agenda Item Number 10, I'm sorry, I lost my script. Don't stray from the
39 script, Mr. President. Agenda item 10, this is a public hearing on a supplemental
40 appropriation to the Department of Homeland Security's FY06 operating budget for the
41 Department of Homeland Security, Urban Areas Security Initiative in amount of
42 \$417,300. We are going to have a vote, let me repeat that for anyone who may be
43 watching somewhere else in the building. There will be a vote following the hearing. And
44 there are no speakers.

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1 Councilmember Praisner,
2 I'll move approval.

3
4 Councilmember Floreen,
5 And I'll second it.

6
7 Council President Leventhal,
8 The motion is made and seconded. Mrs. Praisner moved and Ms. Floreen seconded the
9 motion to approve the supplemental appropriation. Those in favor will signify by raising
10 their hands. It is unanimous among those present.

11
12 [LAUGHTER]

13
14 Council President Leventhal,
15 And so, okay, the Executive Branch has suggested a closed session for the purpose of
16 considering acquisition of real property for a public purpose and matters related directly
17 thereto. The topic is Site 2 acquisition. Is there a motion to that effect?

18
19 Councilmember Praisner,
20 So, moved.

21
22 Councilmember Perez,
23 Seconded.

24
25 Council President Leventhal,
26 Mrs. Praisner has moved and Mr. Perez has seconded a closed session for discussing
27 Site 2. All of those in favor of the motion will signify by raising their hands, it is
28 unanimous among those present. Immediately following that closed session, the
29 suggestion has been made that a closed session be held, and I'm straying from the
30 script again here. Well I'm just going to make it up.

31
32 Councilmember Praisner,
33 Wing it!

34
35 Council President Leventhal,
36 It's regarding a closed session regarding litigation and the topic is the lending law that
37 has passed the Council, is there a motion to that effect?

38
39 Councilmember Praisner,
40 So moved.

41
42 Council President Leventhal,
43 The motion is made and I will second it.

44
45 Councilmember Floreen,

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1 Let me just say, I think you have to refer to portion of the...

2
3 Councilmember Praisner,
4 Yeah, Linda has it.

5
6 Council President Leventhal,
7 Yeah, sorry about that. Okay, and just for the record, the first motion that's already
8 passed was pursuant to Maryland Code State Government Article Section 10-508,
9 paragraph "A," sub paragraphs 3, 4, and 8. And the topic on that one was Site 2,
10 considering acquisition of real property. The motion offered by Ms. Praisner and
11 seconded by myself is a proposed closed session to consult with staff, consultants, or
12 other individuals about pending or potential litigation, pursuant to Maryland codes, State
13 Government Article section 10-508(a)8. The topic is the lawsuit American Financial
14 Services Association, et al, versus Montgomery County. Mr. Knapp?

15
16 Councilmember Knapp,
17 Thank you, Mr. President. I know there's been a lot of e-mail back and forth and for the
18 purpose of discussing the lawsuit; I think that that's okay. I just want to be sure that
19 we're clear that we keep it confined to that. Because I think that there are other
20 discussions in e-mails as it relates to the implications of the actual legislation that was
21 passed that people are raising, constituents are raising, I know I got a number of e-
22 mails over the weekend. That I think if we will have a discussion, it should be in it an
23 open discussion. So, I want to make sure we're very defined in our perimeters as we
24 discuss that.

25
26 Council President Leventhal,
27 I very much appreciate my colleague's concern, which the Council President strongly
28 shares, that only matters that are legal to discuss in closed session should be discussed
29 in closed session. That's a view that the Council President also strongly holds, and the
30 only discussion that the Council President would entertain in closed session would be
31 matters relating to pending or potential litigation pursuant to Maryland Code State
32 Government Article section 10-508(a)8. Mr. Perez?

33
34 Councilmember Perez,
35 Given that we discussed this in closed session, which I supported last week, I'm having
36 difficulty understanding, and I appreciate the point that Mr. Knapp made, and I'm frankly
37 concerned that this is really a discussion about the implications and the e-mails and the
38 lobbying campaign of some in the banking industry. I'm perfectly content with having
39 that discussion in open session in the light of day. Because I look forward to having that
40 debate, and I, we had a closed session matter last week, I supported it. We went into
41 closed session, resolved that, and I'm frankly a little bit concerned that what we're really
42 doing here is having a discussion about e-mails and things of that nature that we have
43 gotten, and so, I'm going to oppose it. Because I haven't, I spoke to Mr. Hansen before
44 hand, and I know of no matter pertaining to the litigation. Our brief is due this Thursday.
45 I'm confident that we're going to be filing the brief. I've actually reviewed it and so I'm

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1 just at a loss at the moment to understand what's happening pertaining to the
2 "litigation." so, I will be opposing this.

3
4
5 Council President Leventhal,
6 Okay. The motion for a closed session is before the Council. Those in favor raise your
7 hands. That would be Ms. Floreen, Mr. Silverman, myself, Ms. Praisner, and Mr. Knapp.
8 Those opposed raise your hands. That would be Mr. Denis, Mr. Andrews, and Mr.
9 Perez. The motion carries by a vote of five to three. The Council will proceed to the sixth
10 floor conference room for two closed sessions.
11
12